UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LARRY A. HYAMS,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 85-C-526-E

DEFAULT JUDGMENT

This matter comes on for consideration this 27th day of February, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Larry A. Hyams, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Larry A. Hyams was served with Alias Summons and Complaint on January 29, 1986. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Larry A. Hyams, for the principal sum of $530.00, plus accrued interest of $78.93 as of March 31, 1984, plus interest at the rate of 9.00 percent per annum from March 31, 1984 until judgment, plus interest thereafter at the current legal rate of 7.71 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACK L. SMITH, Plaintiff, vs. CITY OF VINITA, OKLAHOMA, a Municipal Corporation; and POLICE CHIEF GENE WILLIAMS, Defendants.	)	No. 85-C-951-E

FILED

FEB 28 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

There being no response to the Defendants' motion to dismiss and more than ten (10) days having passed since the filing of the same and extension of time having been sought by Plaintiff having passed by more than thirty (30) days, the Court, pursuant to Local Rule 14(a), as amended effective March 1, 1981, concludes that Plaintiff has therefore waived any objection or opposition to the Defendants' motion to dismiss. See Woods Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964).

The Defendants' motion to dismiss is therefore granted.

DATED this 28th day of February, 1986.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CENTURY BANK, an Oklahoma banking corporation,	)	
Plaintiff,	)	
vs.	)	Case No. 85-C-806-E
BILLY V. HALL, M.D.,	)	
Defendant.	)	

PLAINTIFF'S AND DEFENDANT'S
STIPULATION OF VOLUNTARY DISMISSAL

COME NOW the Plaintiff and the Defendant pursuant to the provisions of F.R.C.P. 41(a)(1)(ii) and hereby voluntarily dismiss the above entitled and numbered action upon stipulation of all parties.

Respectfully submitted,

ABEL & BUSCH, INC.

By: _____
Kevin M. Abel, O.B.A.#104
Attorney for Plaintiff

717 S. Houston, Suite 400
Tulsa, Oklahoma 74127
(918) 592-3611

HOLLIMAN, LANGHOLZ, RUNNELS,
& DORWART

By: _____
Ronald E. Goins
Attorney for Defendant

700 Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103
(918) 584-1471

CERTIFICATE OF MAILING

I, Kevin M. Abel, hereby certify that on this 28TH day of February, 1986, I mailed a true and correct copy of the above and foregoing Stipulation to:

Ronald E. Goins, Esquire
700 Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103

_____
Kevin M. Abel, O.B.A. #104

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LARRY D. COOK, JR.,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 85-C-920-E

DEFAULT JUDGMENT

This matter comes on for consideration this 27th day of February, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Larry D. Cook, Jr., appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Larry D. Cook, Jr., was served with Summons and Complaint on December 23, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Larry D. Cook, Jr., for the principal sum of $206.94, plus interest at the rate of 15.05 percent per annum and administrative costs of $.61 per month from August 9, 1983, and $.68 per month from January 1, 1984 until judgment, plus interest thereafter at the current legal rate of 7.71 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DAMATREA ANN JONES,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 86-C-17-E
	)	
DAYTON-HUDSON CORP., d/b/a TARGET STORES, et al.,	)	
	)	
Defendants.	)	

O R D E R

NOW on this 27th day of February, 1986 comes on for hearing the above styled case and the Court, being fully advised in the premises finds:

There being no diversity of citizenship and no federal claim stated, this case is hereby remanded to the District Court of Tulsa County, State of Oklahoma.

It is so Ordered.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

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CERTIFICATION OF JUDGMENT CIV 101 (3/76)

United States District Court

FOR THE

EASTERN DISTRICT OF OKLAHOMA

CIVIL ACTION FILE NO. 85-403-C

CHASE COMMERCIAL CORPORATION, a Delaware Corporation,
vs.
LAND & MARINE TANK SERVICE, INC., an Oklahoma Corporation, and A. C. PLETCHER,

JUDGMENT

M-1265-E

CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

I, LEWIS L. VAUGHN, Clerk of the United States District Court for the EASTERN District of OKLAHOMA, do hereby certify the annexed to be a true and correct copy of the original judgment entered in the above entitled action on November 12, 1985, as it appears of record in my office, and that

* No notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run on November 12, 1985 upon the entry of 'the judgment'.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of the said Court this 5th day of FEBRUARY, 19 86.

LEWIS L. VAUGHN, Clerk

By Linda M Gaines Deputy Clerk

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST:
LEWIS L. VAUGHN
Clerk, U.S. District Court
Eastern District of Oklahoma
By Linda M Gaines Deputy Clerk
Dated 2/5/86

* When no notice of appeal from the judgment has been filed, insert "no notice of appeal from the said judgment ~~has been filed in my office and the~~ time for appeal commenced to run on [*insert date*] upon the entry of [If no motion of the character described in Rule 73(a) F.R.C.P. was filed, here insert 'the judgment', otherwise describe the nature of the order from the entry of which time for appeal is computed under that rule.] If an appeal was taken, insert "a notice of appeal from the said judgment was filed in my office on [*insert date*] and the judgment was affirmed by mandate of the Court of Appeals issued [*insert date*]" or "a notice of appeal from the said judgment was filed in my office on [*insert date*] and the appeal was dismissed by the [insert 'Court of Appeals' or 'District Court'] on [*insert date*]", as the case may be.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

CHASE COMMERCIAL CORP., Plaintiff,	)	
vs.	)	No. 85-403-C
LAND & MARINE TANK SERVICE, INC. and A. C. PLETCHER, Defendant(s).	)	

FILED

NOV 12 1985

LEWIS L. VAUGHN
CLERK, U. S. DISTRICT COURT
BY PB DEPUTY CLERK

JOURNAL ENTRY OF JUDGMENT

On the 30th day of October, 1985, Plaintiff's Motion for Summary Judgment came on regularly to be heard before the undersigned District Judge of the United States District Court for the Eastern District of Oklahoma in the above-entitled cause. The Court, being fully advised finds:

1. Plaintiff, Chase Commercial Corporation, ("Chase") is a Delaware corporation with its principal place of business in Englewood Cliffs, New Jersey.

2. Defendant, Land & Marine Tank Service, Inc., ("LMI") is an Oklahoma corporation with its principal place of business in Springer, Oklahoma. Defendant A.C. Pletcher is an individual, resident of the State of Oklahoma.

3. This Court has jurisdiction of the parties and the subject matter pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 391.

4. On or about June 4, 1983 LMI executed and delivered to Chase a promissory note and security agreement in the principal sum of $2,542,918.38. Contemporaneously therewith, A.C.

Pletcher executed and delivered to Chase a guaranty whereby A.C. Pletcher unconditionally guaranteed to Chase the payment of said promissory note.

5. While demand for payment has been made, both LMI and A.C. Pletcher have failed to make any payment on said promissory note since March of 1985. Defendants are, and have been, in default under the terms of said promissory note since that date.

6. Plaintiff is entitled to judgment on said promissory note in the amount of all unpaid principal, together with interest now earned, costs of this action, and a reasonable attorney's fee as provided in the promissory note, financing statement and guaranty.

7. After allowing for all due credits the amount due and owing to Chase by the Defendants for principal and interest is $3,002,195.70.

8. Plaintiff is directed to file a separate motion for attorneys' fees in accordance with local Court Rules.

9. Plaintiff is entitled to foreclose on the collateral covered by the security agreement and to have the collateral sold and the proceeds applied to the costs of such sale and the remaining proceeds applied to this payment of the judgment rendered herein together with all costs and legal expenses.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment be, and it is hereby granted, that judgment be, and hereby it is, rendered in favor

of Chase Commercial Corporation and against Land & Marine Tank Service, Inc. and A. C. Pletcher in the amount of $3,002,195.70.

IT IS FURTHER ORDERED that Plaintiff have and recover a judgment for reasonable attorneys' fees and costs of this action as shall be determined by this Court upon motion of the Plaintiff.

IT IS FURTHER ORDERED that Plaintiff have and recover judgment foreclosing in the collateral pursuant to the security agreement.

IT IS FURTHER ORDERED that the pre-judgment replevin bond posted herein by Plaintiff is exonerated and Plaintiff and its surety, Seaboard Surety Co., be, and they are hereby discharged thereon.

Dated this 12th day of November, 1985.

Frank H. Seay
District Judge
United States District Court
for its Eastern District
of Oklahoma

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST:
LOUIS L. VAUGHN
Clerk, U.S. District Court
Eastern District of Oklahoma
By Linda M Gaines
Dated 2/5/86 Deputy Clerk

SC200/RPK

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT, STATE OF OKLAHOMA

JESSE COCHRAN, and RONDA COCHRAN, husband and wife; and their minor son, KEITH COCHRAN,	)	
Plaintiffs,	)	
vs.	)	No. 85-C-60-B
CITY OF TULSA, OKLAHOMA, a municipal corporation;	)	
JAMES W. KARR, a Police Officer employed by said City; and	)	
PAUL HAGGERTY, a Police Officer employed by said City,	)	
Defendants.	)	

JOINT APPLICATION FOR APPROVAL
OF CONSENT JUDGMENT

COMES NOW the plaintiff, by and through his attorneys of record, Kenneth D. Bodenhamer and Thomas Salisbury, and all named defendants by and through their attorney of record, David L. Pauling, who respectfully request the court to approve the attached consent decree, which deposes of all issues existing between the parties. In support hereof, the parties state:

1. That the terms of the proposed consent decree represent careful evaluation of plaintiff's claimed damages, potential liabilities faced by all defendants, and the amount of the proposed judgment is accepted by all parties as being fair, reasonable and equitable;

2. That the allegations stated in plaintiff's amended complaint with reference to the City of Tulsa, Oklahoma, present an issue directly relating to the City of Tulsa and, for purposes of this consent settlement, the parties have agreed to a consent judgment against the City of Tulsa, Oklahoma only, and have further agreed that, concurrent with the filing of the proposed consent decree, a stipulated dismissal with prejudice will be filed with reference to all remaining defendants, namely James W. Karr and Paul Haggerty;

3. That the amount of the proposed settlement is in full, final and complete settlement of all claims, damages and costs incurred by plaintiff's, including costs and attorney fees, and this circumstance is mutally agreeable to all parties.

WHEREFORE, premises considered, it is respectfully requested that the proposed consent decree be approved by the court.

Kenneth D. Bodenhamer
Attorney for Plaintiffs

Thomas Salisbury
Co-Counsel for Plaintiffs

David L. Pauling
Attorney for all defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SHELTER AMERICA CORPORATION,

Plaintiff,

vs.

SUVILLA F. McINTOSH, formerly SUVILLA F. JACKSON, and KENNETH W. JACKSON,

Defendants.

Case No. 85-C-414-E

JUDGMENT OF DEFAULT

This cause coming for hearing before the undersigned Judge upon Plaintiff's Motion for Default Judgment against Defendant, Kenneth W. Jackson, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, and it appearing to the Court that the Complaint in the above cause was filed on the 26th day April, 1985, and that Summons and Complaint were duly served on Defendant on December 11, 1985, and that no answer or other defense has been filed by said Defendant, and that default was entered by the Clerk on the 25th day of February, 1986, and that no proceeding has been taken by said Defendant, Kenneth W. Jackson, since default was entered by the Clerk.

The Court having examined the file, reviewed the Motion, Affidavit, and Brief filed by Plaintiff, and having considered the Affidavit of Plaintiff's counsel as to the attorney fees incurred by Plaintiff in this matter, and being fully advised finds, and

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to 28 U.S.C. § 1332.

2. That default judgment is hereby entered against Defendant, Kenneth W. Jackson, and in favor of Plaintiff for possession of the following described personal property, to-wit: One (1) 1982 Woodcrest Mobile Home, Serial No. 2025-AB.

3. That in the event possession cannot be had within thirty (30) days of this date, the Court retains jurisdiction to reopen the case and consider alternative relief.

4. That in the event possession is obtained within thirty (30) days of this date, this Court reserves, until after sale proceedings, the right of Plaintiff to be awarded a deficiency judgment with interest thereon as provided by the Contract and by 12A O.S. § 9-504.

5. That Plaintiff have further judgment against Defendant, Kenneth W. Jackson, for a reasonable attorney's fee in the amount of Five Hundred Ninety-Five and no/100 Dollars ($595.00).

6. That the Court further directs that Plaintiff is entitled to ~~collection expenses and~~ costs of this action.

ORDERED this 28th day of February 1986.

S/ JAMES O. ELLISON

HONORABLE JAMES O. ELLISON,
UNITED STATES DISTRICT JUDGE

Entered

FILED

FEB 28 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT, STATE OF OKLAHOMA

JESSE COCHRAN, and RONDA COCHRAN, husband and wife; and their minor son, KEITH COCHRAN,	)	
Plaintiffs,	)	
vs.	)	No. 85-C-60-B
CITY OF TULSA, OKLAHOMA, a municipal corporation;	)	
JAMES W. KARR, a Police Officer employed by said City; and	)	
PAUL HAGGERTY, a Police Officer employed by said City,	)	
Defendants.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

COMES NOW the plaintiffs, by and through their attorneys of record, Kenneth D. Bodenhamer and Thomas Salisbury, and the defendants James W. Karr and Paul Haggerty, by and through their attorney of record, David L. Pauling, and stipulate to the dismissal of the captioned action with prejudice insofar as it relates to James W. Karr and Paul Haggerty, pursuant to the authorization contained at F.R.C.P. 41 §(A)(1)(ii), with prejudice to plaintiff's right to hereafter reinstate such action as to said defendants, with cost assessed to plaintiff.

Kenneth D. Bodenhamer
Attorney for Plaintiffs

Thomas Salisbury
Co-Counsel for Plaintiffs

David L. Pauling
Attorney for defendants
James W. Karr & Paul Haggerty

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Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BENNY LEROY DIRCK, Plaintiff,	)	
v.	)	No. 83-C-103-BT
DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, Defendant.	)	

ORDER SUSTAINING MOTION FOR SUMMARY JUDGMENT OF DEFENDANT

The court has for decision plaintiff's motion for judgment on the pleadings or motion for summary judgment on his first claim and plaintiff's motion that his second claim be submitted to the Oklahoma Supreme Court as a certified question of law pursuant to the Uniform Certification of Questions of Law Act, 20 Okl.St.Ann. §1601 et seq. Also before the court for decision is defendant's motion for summary judgment on plaintiff's first and second claims for relief. For the reasons stated hereafter, defendant's motion for summary judgment is hereby sustained, thus rendering moot plaintiff's motions.

In the plaintiff's first claim he seeks a determination that the defendant, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms ("ATF"), acted arbitrarily and capriciously in denying his application for relief from federal firearms disability under 18 U.S.C. §925(c). In his second claim, plaintiff seeks an adjudication that plaintiff's Oklahoma

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gubernatorial pardon of his 1958 state felony conviction is an exception to disability under the Omnibus Crime Control and Safe Streets Act of 1968.

Pursuant to the court's Order of April 27, 1984, the defendant provided the court with its administrative file in the matter. As a result of a Freedom of Information Act request, the same file, with the confidential source names properly redacted, was furnished to the plaintiff.

In a review by the court of administrative action of the type herein, the plaintiff is not entitled to a trial de novo. Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 91 S.Ct. 814, 28 L.Ed.2d 134 (1971), Kitchens v. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 535 F.2d 1197 (9th Cir. 1976), and United States v. The Texas Pipeline Co., 528 F.Supp. 728 (E.D.Okla. 1978). The proper standard of review is whether the agency actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. §706 (1976). The "arbitrary and capricious" standard of review is a narrow one. Citizens to Preserve Overton Park, Inc., supra. The scope of review of agency action taken under the "arbitrary and capricious" standard is more restrictive than the "substantial evidence" test which is applied when reviewing formal findings made on a hearing record. Bradley v. Bureau of Alcohol, Tobacco and Firearms, 736 F.2d 1238 at 1240. The Supreme Court in Citizens to Preserve Overton Park, supra, points out that review under the substantial evidence test is authorized

only when the agency action is taken pursuant to a rule making provision of the Administrative Procedures Act or when the agency action is based on a public adjudicatory hearing. Under the narrower "arbitrary and capricious" standard, the administrative action may be set aside only where it is not supportable on any rational basis. Carlisle Paper Box Company v. N.L.R.B., 398 F.2d 1, 6 (3rd Cir. 1968), and First National Bank of Fayetteville v. Smith, 508 F.2d 1371, 1376 (8th Cir. 1974), cert. denied, 421 U.S. 930, 95 S.Ct. 1655, 44 L.Ed.2d 86 (1975). The court is not permitted to substitute its judgment for that of the agency. Davis v. Erdmann, 607 F.2d 917 (10th Cir. 1979).

THE FACTS

Plaintiff, Benny Leroy Dirck, was convicted on January 3, 1958, in the District Court of Tulsa County, Oklahoma, of embezzlement by an employee. He was given a three-year suspended sentence, conditioned on good behavior. On May 31, 1965, plaintiff received a gubernatorial pardon which restored "all rights of citizenship." On December 2, 1981, plaintiff applied for relief from federal firearms disabilities existing under 18 U.S.C. §925(c). The application indicated plaintiff held the position of Chief of Police of the City of Catoosa, Oklahoma. Following receipt of the application, ATF went about its established procedure investigating the application and rendering a decision thereon. The procedure is set forth in ATF Order 3270.10. The "affidavit" of Stephen E. Higgins, Director, ATF, provided pursuant to 28 U.S.C. §1746, set forth the basic

conclusions from the ATF factual investigation in support of the denial of plaintiff's application and determination that applicant would likely act in a manner dangerous to public safety and that granting the relief would be contrary to the public interest. The basis for the determination included:

"a. The significant amount of public opposition to the granting of relief;

b. The low esteem in which plaintiff was viewed by fellow law enforcement officers;

c. The fact that plaintiff in his position as a police officer, after his conviction, killed a man using a firearm and was reported by both law enforcement personnel and citizens to have boasted of the killing;

d. The plaintiff has a reputation with some members of the community of being quick tempered and capable of violence;

e. The plaintiff was the subject of an ongoing investigation by the Oklahoma State Bureau of Investigations into his activities and conduct; and

f. That plaintiff provided the investigating agent with false information by denying he was ever under indictment when, in fact, he was indicted in 1970." (The indictment was dismissed.)

LEGAL AUTHORITY

Because of the plaintiff's felony conviction, he is under federal firearms disabilities imposed by 18 U.S.C. §922(g)(1) and (h)(1), and 18 U.S.C. App. §1202. Title I of the Gun Control Act of 1968, as codified at 18 U.S.C. §922(g)(1) and (h)(1) (Title I), makes it unlawful for any person convicted of a crime punishable by imprisonment for a term exceeding one year to ship, transport, or receive any firearm or ammunition in interstate or

foreign comlmerce. Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as codified at 18 U.S.C. App. §1202 (Title VII), states it is unlawful for any person convicted of a crime punishable by imprisonment for a term exceeding one year to receive, possess, or transport a firearm.

There is an exception to the disabilities imposed by Title I for firearms and ammunition issued for the use of the United States, any State, or any department, agency, or political subdivision thereof. 18 U.S.C. §925(a)(1). There is no similar exception to the disabilities imposed by Title VII.

Title VII provides that any person who has been pardoned and whose pardon contains an express authorization to possess a firearm is free of the Title VII disabilities. 18 U.S.C. App. §1203(2). There is no similar provision in Title I.

Title I of the Gun Control Act provides:

> "(c) A person who has been convicted of a crime punishable by imprisonment for a term exceeding one year (other thn a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act) may make application to the Secretary for relief from the disabilities imposed by federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of such conviction, and the Secretary may grant such relief if it established to his satisfaction that the circumstances regarding the conviction, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest." 18 U.S.C. §925(c).

Plaintiff alleges that ATF acted in an arbitrary and capricious manner in denying his application for relief. The

court has sufficient information before it to conclude that the administrative decision was reasonable and that ATF did not act in an arbitrary and capricious manner. The administrative file supports the fact that ATF followed its procedures set forth in ATF Order 3270.10A. The procedure, as well as the information developed in the administrative file herein, provides the agency with favorable information and references from the applicant as well as favorable and unfavorable information obtained from developed sources. The agency is entitled to a presumption of regularity. Pacific States Box and Basket Co. v. White, 296 U.S. 176, 185 (1935).

Title VII (§1203(2)) clearly states what a state pardon must reflect to be effective in removing Title VII disabilities. It states:

> "any person who has been pardoned by the President of the United States or the chief executive of a State and has expressly been authorized by the President or such chief executive, as the case may be, to receive, possess, or transport in commerce a firearm."

Whether a person is subject to federal firearms disabilities is a matter of federal law. Dickerson v. New Banner Institute, Inc., 460 U.S. 103, 103 S.Ct. 986, 991 (1983). In Dickerson, the court stated that a person who had a felony conviction expunged under state law was nevertheless subject to federal firearms disabilities. In reaching this conclusion, the Court also discussed the effect of a pardon on federal firearms disabilities. Regarding 18 U.S.C. §1203, the court stated:

> "Thus, in that statute, even a pardon is not sufficient to remove the firearms disabilities unless there is an express authorization to have the firearm." Dickerson, supra, at 994.

In the case of United States v. Sutton, 521 F.2d 1385 (7th Cir. 1975), the court stated the requirement of an express authorization in a pardon to possess firearms must be given effect. The court stated:

> "In enacting Title VII, Congress made express findings that felons who receive, possess, or transport firearms represent a serious threat to the nation's continued stability and vitality. 18 US.C. App. §1201. The statutory scheme clearly reveals a congressional intent to grant only limited power to state executives to relieve the federal disability by use of state pardon power. Under §1203(2), a state pardon, regardless of its effect in restoring all state-imposed disqualifications, relieves federal §1202 liability only when the governor has considered the federal policies underlying the Act, as set forth in the congressional findings, and expressly concluded that they do not apply to the particular candidate for state pardon. State-imposed disabilities are not necessarily coextensive with or motivated by similar concerns as those imposed by Congress. Thus, the requirement for express authorization, is not redundant but serves the function of assuring that, before a state executive grants relief from a federally-imposed liability, the national concerns are considered and addressed. These considerations apply equally whether the pardon in question was granted before or after the statute's enactment and defendant's failure to obtain the required executive authorization as a supplement to his pardon precludes him from relying upon it for exemption from §1202(a) liability." United States v. Sutton, supra, at 1390 (footnotes omitted).

The Sutton opinion answers plaintiff's contention that the requirements of 18 U.S.C. App. §1203(2) do not apply to him because his pardon predated such enactment. The Fifth Circuit in United States v. Matassini, 565 F.2d 1297 (5th Cir. 1978), has

held to the contrary but Sutton appears to be the better reasoned case in carrying out congressional intent.

A gubernatorial pardon that is effective in removing Title VII disabilities does not remove Title I disabilities. The two statutes are separate laws and are to be considered separately. United States v. Bass, 404 U.S. 336, 343-344 (1971). The Supreme Court stated that Congress intended to enact two independent gun control statutes, each fully enforceable on its own terms, and that the intent is confirmed by the legislative history of the Omnibus Act. United States v. Batchelder, 442 U.S. 114, 119 (1979).

Congress left it to the Secretary of the Treasury, and not to the chief executives of the fifty states, to determine whether the disabilities of Title I should be removed in any particular case. The Seventh Circuit has specifically held that a state pardon that satisfies the Title VII requirements does not remove the Title I disabilities. Thrall v. Wolfe, 503 F.2d 313 (7th Cir. 1974), cert. denied, 420 U.S. 972 (1975). In reference to §1203(2) of Title VII, the court stated:

> "Where Congress did intend that a state pardon exempt an individual from a portion of the federal gun control laws, it had no difficulty expressing that intention. . . . We think that the absence of any comparable provision in Title IV (and the presence there of a provision for administrative relief) signifies that Congress did not intend that a state pardon affect the disabilities in that title." Thrall v. Wolfe, supra 317-318. (Title IV was amended prior to its effective date by Title I of the Gun Control Act of 1968.)

The Court concluded, "Considering the Act as a whole, we

cannot conclude that Congress intended that a gubernatorial pardon remove the disabilities imposed in §922." Thrall v. Wolfe, supra at 318.

As federal firearms disability matters are exclusively within the federal law, the Court declined the request of plaintiff to submit a certified question to the Supreme Court of the State of Oklahoma. Title VII has been held to be constitutional even when applied to state employees. Hyland v. Fukuda, 580 F.2d 977 (9th Cir. 1978).

Following an examination of the administrative record, and the reasons given for denial of plaintiff's application, the Court concludes the defendant's decision was not arbitrary and capricious. The defendant's motion for summary judgment is hereby sustained and the plaintiff's motion for judgment on the pleadings and motion for summary judgment is hereby denied.

A separate Judgment will be entered this date in keeping with the Order of the Court.

DATED this 28th day of Feb, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BENNY LEROY DIRCK,

Plaintiff,

v.

DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,

Defendant.

No. 83-C-103-B

FILED
FEB 28 1986
Jack C. Silver, Clerk
U. S. DISTRICT COURT

J U D G M E N T

In keeping with the Order of the Court entered this date, Judgment is hereby entered in favor the defendant, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, and against the plaintiff, Benny Leroy Dirck, and the costs are assessed against the plaintiff. The parties are to pay their own respective attorney's fees.

DATED this 28th day of Feb, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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Entered

FILED

FEB 28 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT G. FRISBIE,

Defendant.

CIVIL ACTION NO. 86-C-4-E

DEFAULT JUDGMENT

This matter comes on for consideration this 27th day of February, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Robert G. Frisbie, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Robert G. Frisbie, acknowledged receipt of Summons and Complaint on January 13, 1986. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Robert G. Frisbie, for the principal sum of $5,635.91, plus interest at the rate of 15.05 percent per annum and administrative costs of $.68 per month from September 24, 1985 until judgment, plus interest thereafter at the current legal rate of 7.719 percent per annum until paid, plus costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 28 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff, vs. THEODORE J. GOUGOLIS, BOARD OF COUNTY COMMISSIONERS, OSAGE COUNTY, OKLAHOMA and COUNTY TREASURER, OSAGE COUNTY, OKLAHOMA, Defendants.	)	CIVIL ACTION NO. 85-C-1131-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 27th day of February, 1986. The Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney; the Defendants, Board of County Commissioners, Osage County, Oklahoma, and County Treasurer, Osage County, Oklahoma, appear by Larry D. Stuart, District Attorney; and the Defendant Theodore J. Gougolis, appears not, but makes default.

The Court being fully advised and having examined the file herein finds that Defendant, Theodore J. Gougolis, acknowledged receipt of Summons and Complaint on January 4, 1986; and that Defendant, Board of County Commissioners, Osage County, Oklahoma, acknowledged receipt of Summons and Complaint on December 30, 1985.

It appears that the Defendants, Board of County Commissioners, Osage County, Oklahoma, and County Treasurer, Osage County, Oklahoma, filed their Answer herein on January 3, 1986; and that the Defendant, Theodore J. Gougolis, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Osage County, Oklahoma, within the Northern Judicial District of Oklahoma:

> The East Half of the Northeast Quarter of the Northeast Quarter of Section 29, Township 21 North, Range 12 East of the Indian Base and Meridian, Osage County, State of Oklahoma, according to the U.S. Government Survey thereof.

That on January 14, 1985, Theodore J. Gougolis executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, his mortgage note in the amount of $48,000.00, payable in monthly installments, with interest thereon at the rate of twelve and one-half percent (12-1/2%) per annum.

That as security for the payment of the above-described note, Theodore J. Gougolis executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a mortgage dated January 14, 1985, covering the above-described property. Said mortgage was recorded on

January 17, 1985, in Book 0669, Page 194, in the records of Osage County, Oklahoma.

The Court further finds that the Defendant, Theodore J. Gougolis, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Theodore J. Gougolis, is indebted to the Plaintiff in the sum of $47,983.25 as of April 1, 1985, plus interest accruing thereafter at the rate of twelve and one-half percent (12-1/2%) per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendant, County Treasurer, Osage County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of $289.80, plus penalties and fees, for the year of 1985. Said lien is superior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendant, Theodore J. Gougolis, in the principal amount of $47,983.25 as of April 1, 1985, plus interest thereafter at the rate of twelve and one-half percent (12-1/2%) per annum until judgment, plus interest thereafter at the current legal rate of 7.11 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Osage County, Oklahoma, have and recover judgment in the amount of $289.80, plus penalties and fees, for ad valorem taxes for the year of 1985, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Theodore J. Gougolis, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the Defendant, County Treasurer, Osage County, Oklahoma, in the amount of $289.80, plus penalties and fees, ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney

NANCY NESBITT BLEVINS
Assistant United States Attorney

LARRY D. STUART
District Attorney
Osage County, Oklahoma

Entered

FILED

FEB 28 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT A. WACHSLER, INC., a Connecticut corporation,	)	
Plaintiff,	)	
vs.	)	No. 80-C-641-E
FLORAFAX INTERNATIONAL, INC., a Delaware corporation,	)	
Defendant.	)	

JUDGMENT

This action comes on for consideration upon entry of mandate by the Tenth Circuit and the Court, being fully advised in the premises finds judgment shall be entered as follows:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff Robert A. Wachsler, Inc. take nothing, that this action be dismissed on the merits and that the Defendant Florafax International, Inc. recover of the Plaintiff its costs of action.

Dated at Tulsa, Oklahoma this 27th day of February, 1986.

James O. Ellison

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

129

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT A. WACHSLER, INC., a Connecticut corporation,

Plaintiff,

vs.

FLORAFAX INTERNATIONAL, INC., a Delaware corporation,

Defendant.

No. 80-C-641-E

FILED

FEB 28 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

NOW on this 27th day of February, 1986 comes on for hearing the above styled case and the Court, being fully advised in the premises finds:

Plaintiff filed motion for leave to amend complaint on January 21, 1986 following issuance of the mandate in the above styled case and the Court, having carefully reviewed the same finds the same should be denied.

While the Tenth Circuit did not specifically prohibit the requested amendment, this Court finds the theory now urged could have been raised in the original proceeding and now comes too late.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's motion to amend be and is hereby denied.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

128

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARY L. SIMMONS and JOHN D. SIMMONS, Plaintiff, vs. MICHAEL FRANCIS DESIDERIO, an individual, and JOHN BROWN UNIVERSITY, Defendant, and FARMERS INSURANCE COMPANY, INC. Intervenor.	)	Case No. 84-C-799E

FILED

FEB 28 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

This matter coming on for hearing before the Court on this 27th day of February, 1986, upon the application of the Plaintiffs for order of dismissal with prejudice in this cause, Plaintiffs appearing by counsel, John McCormick, and the Defendants, Michael Francis Desiderio and John Brown University, appearing by counsel, Dale F. McDaniel, and the Court being advised in the premises and having examined the application of the Plaintiffs herein, finds that all issues of law and fact heretofore existing between the parties have been settled, compromised, released and extinguished, for valuable consideration flowing from Plaintiffs to Defendants and from Defendants to Plaintiffs, and further finds that there remains no issue of law or fact to

be determined in this cause. The Court further finds that Plaintiffs' desire to dismiss their cause to future actions for the reasons stated, and their application should be granted.

BE IT, THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT that all issues of law and fact heretofore existing between the Plaintiffs and Defendants have been settled, compromised, released and extinguished for valuable consideration, and that there remains no issue to be determined in this cause between the parties.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT that Plaintiffs' cause and any causes arising therefrom, being the same, are hereby dismissed with prejudice to all future actions thereon.

S/ JAMES O. ELLISON

JUDGE

Approved:

By: John F. McCormick
John McCormick
Attorney for Plaintiffs

By: Dale F. McDaniel
Dale F. McDaniel
Attorney for Defendants,
Michael Francis Desiderio and
John Brown University

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WISE TRANSPORTATION, INC., an Oklahoma corporation,	)	
Plaintiff,	)	No. 85-C-304B
vs.	)	
FRUEHAUF CORPORATION, a Michigan corporation,	)	
Defendant.	)	

FILED
FEB 27 1986
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

The Court being fully advised in the premises and on consideration of the parties' Joint Stipulation of Dismissal With Prejudice pursuant to agreement, finds that such Order should issue.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's causes of action be and the same are hereby dismissed with prejudice.

Dated this 27 day of February, 1986.

S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES C. MAYOZA, an individual,

Plaintiff,

v.

CHARLES SHELTON, an individual and JOHN TOWNSEND, an individual,

Defendants.

No. 86-C-52 C

NOTICE OF DISMISSAL WITH PREJUDICE

TO: CHARLES SHELTON
3139 E. 82nd Street
Tulsa, OK 74137

JOHN TOWNSEND
1236 E. 30th Place
Tulsa, OK 74114

Please take notice that the above-entitled action is hereby dismissed with prejudice by Plaintiff, James C. Mayoza.

DATED this 27th day of February, 1986.

J. Stephen Welch
Attorney for Plaintiff

OF COUNSEL:

SCHUMAN AND WELCH, P.C.
Suite 205, 51 Yale Building
5110 South Yale
Tulsa, OK 74135
918/496-0491
OBA #9453

CERTIFICATE OF SERVICE

I, J. Stephen Welch, Attorney for Plaintiff, James C. Mayoza, certify that I have on this 24th day of February, 1986, duly served a copy of the foregoing Notice of Dismissal with Prejudice on all parties, by mailing with sufficient postage attached, a copy of same to:

Charles Shelton
3139 E. 82nd Street
Tulsa, OK 74137

John Townsend
1236 E. 30th Place
Tulsa, OK 74114

J. Stephen Welch

3401.14C

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

THE BOARD OF TRUSTEES OF THE PIPELINE INDUSTRY BENEFIT FUND, and THE BOARD OF TRUSTEES OF LOCAL UNION 798,	)	
Plaintiffs,	)	
vs.	)	No. 85-C-795-C
W. R. PHILLIPS, d/b/a W. R. PHILLIPS COMPANY,	)	
Defendant.	)	

ORDER OF DISMISSAL

Now on this 26th day of February, 1986, plaintiffs' Motion to Dismiss came on for consideration. For good cause shown, the Court finds that the motion should be granted.

IT IS THE ORDER OF THIS COURT that said action be, and the same is, hereby dismissed without prejudice to the bringing of another or future action by the plaintiffs herein.

(Signed) H. Dale Cook
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

VERNON B. GRUBBS, JR., Plaintiff, vs. TEXACO INC., Defendant.	)	Case No. 85-C-164-E
and		
KENT PEARSON, Plaintiff, vs. TEXACO INC., et al., Defendants.	)	Case No. 85-C-237-E
and		
JAMES W. DAVIS, JR., Plaintiff, vs. TEXACO INC., and G. N. WILSON, SR., Defendants.	)	Case No. 85-C-653-E

ORDER ALLOWING DISMISSAL

Plaintiff Vernon B. Grubbs, Jr. and Defendant Texaco Inc., having informed the Court that they have reached a mutually satisfactory private settlement regarding Plaintiff's claims in this action, it is hereby ORDERED, ADJUDGED AND DECREED that

Plaintiff's claims against Defendant should be dismissed with prejudice, with each party to bear their own costs and attorneys' fees.

DATED this 26th day of February, 1986.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

VERNON B. GRUBBS, JR., Plaintiff, vs. TEXACO INC., Defendant.	)	Case No. 85-C-164-E
and KENT PEARSON, Plaintiff, vs. TEXACO INC., et al., Defendants.	)	Case No. 85-C-237-E
and JAMES W. DAVIS, JR., Plaintiff, vs. TEXACO INC., and G. N. WILSON, SR., Defendants.	)	Case No. 85-C-653-E

ORDER ALLOWING DISMISSAL

Plaintiff Kent Pearson and Defendants Texaco Inc., John C. Grant, George N. Wilson, Sr. and the Getty Merger Severance Program, having informed the Court that they have reached a mutually satisfactory private settlement regarding Plaintiff's claims in this action, it is hereby ORDERED, ADJUDGED AND DECREED that

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Plaintiff's claims against Defendants should be dismissed with prejudice, with each party to bear their own costs and attorneys' fees.

DATED this 26th day of February, 1986.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

VERNON B. GRUBBS, JR., Plaintiff, vs. TEXACO INC., Defendant.	)	Case No. 85-C-164-E
and		
KENT PEARSON, Plaintiff, vs. TEXACO INC., et al., Defendants.	)	Case No. 85-C-237-E
and		
JAMES W. DAVIS, JR., Plaintiff, vs. TEXACO INC., and G. N. WILSON, SR., Defendants.	)	Case No. 85-C-653-E

ORDER ALLOWING DISMISSAL

Plaintiff Kent Pearson and Defendants Texaco Inc., John C. Grant, George N. Wilson, Sr. and the Getty Merger Severance Program, having informed the Court that they have reached a mutually satisfactory private settlement regarding Plaintiff's claims in this action, it is hereby ORDERED, ADJUDGED AND DECREED that

Plaintiff's claims against Defendants should be dismissed with prejudice, with each party to bear their own costs and attorneys' fees.

DATED this 26th day of February, 1986.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

VERNON B. GRUBBS, JR., Plaintiff, vs. TEXACO INC., Defendant.	)	Case No. 85-C-164-E
and		
KENT PEARSON, Plaintiff, vs. TEXACO INC., et al., Defendants.	)	Case No. 85-C-237-E
and		
JAMES W. DAVIS, JR., Plaintiff, vs. TEXACO INC., and G. N. WILSON, SR., Defendants.	)	Case No. 85-C-653-E

ORDER ALLOWING DISMISSAL

Plaintiff Vernon B. Grubbs, Jr. and Defendant Texaco Inc., having informed the Court that they have reached a mutually satisfactory private settlement regarding Plaintiff's claims in this action, it is hereby ORDERED, ADJUDGED AND DECREED that

Plaintiff's claims against Defendant should be dismissed with prejudice, with each party to bear their own costs and attorneys' fees.

DATED this 26th day of February, 1986.

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 27 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JAMES R. HENNESSEY,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 85-C-419-B

ORDER OF DISMISSAL

Now on this 27 day of February, 1986, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve James R. Hennessey have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, James R. Hennessey, be and is dismissed without prejudice.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PAUL THOMAS (TOM) INMAN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant,

vs.

JERRY D. GARLAND, EDWARD C. HAWKINS, and TERRENCE (TERRY) N. TAYLOR,

Additional Defendants on Counterclaim.

No. 84-C-310-B

FILED
FEB 27 1986
Jack C. Silver, Clerk
U. S. DISTRICT COURT

JUDGMENT

In keeping with the verdict of the jury entered and filed of record on February 24, 1986, IT IS HEREBY ADJUDGED AND DECREED the United States of America is to have judgment on its counterclaim against the plaintiff, Paul Thomas (Tom) Inman, in the amount of One Hundred Twenty-Eight Thousand Six Hundred Sixty-Two and 18/100 Dollars ($128,662.18), plus statutory interest from the date of assessment to the date of this judgment, and post-judgment interest of 11% per annum pursuant to 28 U.S.C. §1961(c)(1) and 26 U.S.C. §6621(b), and against the additional defendants, Jerry D. Garland, in the amount of Two Hundred Ninety-One Thousand One Hundred Sixty and 80/100 Dollars ($291,160.80), plus statutory interest from the date of assessment to the date of this judgment, and postjudgment interest of 11% per annum pursuant to 28 U.S.C. §1961(c)(1) and 26 U.S.C. §6621(b), and Edward C. Hawkins in the amount of Two Hundred Twenty Six Thousand Four Hundred Twenty-One and 12/100 Dollars ($226,421.12), plus statutory

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interest from the date of assessment to the date of this judgment, and postjudgment interest of 11% per annum pursuant to 28 U.S.C. §1961(c)(1) and 26 U.S.C. §6621(b). The United States of America is hereby granted judgment against said plaintiff and additional defendants on their respective claims against the Government. If application is timely made pursuant to local rule, costs will be assessed against said plaintiff and additional defendants.

IT IS FURTHER ORDERED AND ADJUDGED the additional defendant, Terrence (Terry) N. Taylor is hereby granted judgment against the United States of America on its claim against said additional defendant, and the costs will be assessed against the Government in reference to the claim against Taylor, if timely application is made therefor pursuant to local rule.

DATED this 27th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

VIKING PETROLEUM, INC., a Delaware corporation,

Plaintiff,

v.

GEO EXPLORATION, INC., a Texas corporation, and FRANK WHITTINGTON, an individual,

Defendant.

and BUSINESSMEN'S ASSURANCE COMPANY OF AMERICA, a Missouri corporation,

Third Party Defendant.

No. 84-C-835-B

FILED

FEB 27 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

The Court has for consideration the Findings and Recommendations of the Magistrate filed February 11, 1986 in which the Magistrate made recommendations on Third Party Defendant, Businessmen's Assurance Company of America's Motion to Dismiss For Failure To State A Claim Upon Which Relief Can Be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

It is therefore Ordered that Businessmen's Assurance Company of America's Motion to Dismiss be and is hereby granted.

It is further Ordered that no fees or costs pursuant to Rule 11 of the Fed.R.Civ.P. be awarded Businessmen's Assurance Company of America.

It is so Ordered this 27 day of February, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GENERAL DISCOUNT CORPORATION, Plaintiff,	)	
vs.	)	No. 85-C-298-B
PRECISION COMPONENTS, INC., KENNETH L. BARTLEY and THOMAS L. BARTLEY, Defendants.	)	

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

FEB 27 1986

ORDER

This matter comes before the Court on plaintiff's application for attorney fees. On January 8, 1986, the Court set plaintiff's application for hearing on February 6, 1986. On February 6, 1986, plaintiff contacted the Court and requested that the hearing be stricken and advised that they would withdraw the application within a week thereof. No withdrawal of the application for attorney fees has been filed. The Court therefore, sua sponte, dismisses plaintiff's application for attorney fees in the interest of clearing the matter from its records.

IT IS SO ORDERED this 27 day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FEB 27 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

vs.

LOCAL 798 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE U.S.A. AND CANADA, AFL-CIO, et al.,

Defendants.

No. 84-C-730-C

O R D E R

Now before the Court for its consideration are the request for Order of dismissal by defendants Bill Hawk, Inc.; Mid-Ohio Contracting, Inc.; Poling & Bacon Construction Company, Inc.; Jack Johnson Enterprises, Inc; R. A. Hamilton Corporation; United Welding, Inc., and Midwestern Contractors, Inc., filed on February 11, 1986, and the request for order of dismissal by defendant Midwestern Pipeline Services, Inc., filed on February 18, 1986. The movants assert that in previous pleadings filed before the Court they have raised the issue of the plaintiff's failure to comply with the administrative prerequisites of Title VII of the Civil Rights Act of 1964, 42 U.S.C §2000e et seq. This issue was the basis of the Court's Order of December 23, 1985, dismissing numerous defendants. The movants herein assert that they are similarly situated to the defendants previously dismissed.

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Upon examination of the record, the Court finds that the movants' allegations are correct. Based upon the reasoning and authority recited in the Court's Order of December 23, 1985, granting the motion to dismiss of the Pipe Line Contractors Association and the "PLCA group" the requests should be granted.

Accordingly, it is the Order of the Court that the requests for Orders of dismissal of the defendants named above should be and are hereby granted. In accordance with this ruling, the following defendants are hereby dismissed from this action: Bill Hawk, Inc.; Mid-Ohio Contracting, Inc.; Poling & Bacon Construction Company, Inc.; Jack Johnson Enterprises, Inc; R. A. Hamilton Corporation; United Welding, Inc.; Midwestern Contractors, Inc., and Midwestern Pipeline Services, Inc..

IT IS SO ORDERED this 27 day of February, 1986.

H. DALE COOK
Chief Judge, U. S. District Court

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FEB 27 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

vs.

LOCAL 798 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE U.S.A. AND CANADA, AFL-CIO, et al.,

Defendants.

No. 84-C-730-C

O R D E R

Now before the Court for its consideration is the motion of defendant Great Plains Company for dismissal, pursuant to Rule 12 F.R.Cv.P. on several grounds, among them the fact that the plaintiff failed to comply with Title VII's administrative prerequisites. As the Court finds that this issue is dispositive, the Court will not address the other issues raised.

It is undisputed that the defendant was not named in an administrative charge before the present action was commenced. Based upon the reasoning and authorities of this Court's Order filed December 23, 1985, granting the motion to dismiss of the PLCA and "PLCA group," this Court finds that the failure to charge the defendant requires dismissal of this action against it.

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Accordingly, it is the Order of the Court that the motion of defendant Great Plains Company for dismissal should be and hereby is granted.

IT IS SO ORDERED this 27th day of February, 1986.

H. DALE COOK
Chief Judge, U. S. District Court

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 27 1986

CLERK
U.S. DISTRICT COURT

DAVID AMES and LARRY TERBOVICH, Plaintiff,	)	
vs.	)	Case No. 86-C-81-C
MID-AMERICA PREFERRED INSURANCE COMPANY and COUNTRY MUTUAL INSURANCE COMPANY, Defendant.	)	

DEFAULT JUDGMENT

THIS matter comes on for consideration on this the 26 day of February 1986. The Plaintiffs appear by KENNETH V. TODD, their attorney, and the Defendants MID-AMERICA PREFERRED INSURANCE COMPANY and COUNTRY MUTUAL INSURANCE COMPANY appear not.

The Court, being fully advised and having examined the file herein, finds that the Defendant MID-AMERICA PREFERRED INSURANCE COMPANY was duly served with a copy of the Summons and the Complaint herein on the 31st day of January, 1986. The time within which the Defendant MID-AMERICA PREFERRED INSURANCE COMPANY could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant MID-AMERICA PREFERRED INSURANCE COMPANY has not answered or otherwise moved, and default has been entered by the Clerk of this Court. The Plaintiffs are entitled to a judgment as a matter of law against the Defendant MID-AMERICA PREFERRED INSURANCE COMPANY.

LAW OFFICES
KENNETH V. TODD
& ASSOCIATES, INC.
1321 South Denver
Tulsa, Oklahoma 74119
Telephone (918) 592-1318

The Court further finds that the Defendant COUNTRY MUTUAL INSURANCE COMPANY was duly served with notice of this action, and a copy of the Summons and Complaint, on the 3rd day of February, 1986. The time within which the Defendant COUNTRY MUTUAL INSURANCE COMPANY could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant COUNTRY MUTUAL INSURANCE COMPANY has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiffs are entitled to a judgment against the Defendant COUNTRY MUTUAL INSURANCE COMPANY as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, by the Court, that the Plaintiffs DAVID AMES and LARRY TERBOVICH have and recover a judgment against the Defendants MID-AMERICA PREFERRED INSURANCE COMPANY and COUNTRY MUTUAL INSURANCE COMPANY, jointly and severally, for the principal sum of Nineteen Million Four Hundred Eighty-four Thousand Two Hundred Ninety-two and 11/100 Dollars ($19,484,292.11), plus interest thereafter at the current legal rate of 7.71 percent from the date of this judgment until paid, plus all costs of this action.

(Signed) H. Dale Cook

JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LOUIS PORTER,

Plaintiff,

v.

SAM BELZBERG and LESMUR HOLDINGS, LTD., a Canadian corporation,

Defendants and Third-Party Plaintiffs,

v.

JOE CAPOZZI, an individual; CLARENCE R. WRIGHT, an individual; THE YUKON NATIONAL BANK, a national banking association; ATOKA CONSULTANTS, INC., a/k/a ATOKA CONSULTING COMPANY, INC., an Oklahoma corporation; RAYMOND WRIGHT, an individual; C. R. WRIGHT ASSOCIATES MANAGEMENT, INC., an Oklahoma corporation; CO-RAN INVESTMENTS, INC., an Oklahoma corporation; JAN L. MILLER, an individual; JACK W. SMITH, an individual; S.P. ENERGY COMPANY, an Oklahoma corporation; and RESOURCES DIVERSIFIED, INC., an Oklahoma corporation,

Third-Party Defendants.

No. 82-C-742-B

CORRECTED AMENDED JUDGMENT

Pursuant to Rule 60(a), F.R.Civ.P., and in keeping with the Findings of Fact and Conclusions of Law entered July 3, 1985, and the Order entered February 13, 1986, Judgment is hereby entered as follows in favor of Lesmur Holdings, Ltd., a Canadian corporation, and against the defendants, Clarence R. Wright, Yukon National Bank, Atoka Consultants, Inc., C.R. Wright Associates

Management, Inc., Co-Ran Investments Company, Inc., S. P. Energy Company and Resources Diversified, Inc.:

(A) In the sum of $224,060.00 , plus 6% per annum interest from August 7, 1981 until July 8, 1985 and at the rate of 7.70% per annum interest thereafter.

(B) In the sum of $37,883.66, plus post judgment interest thereon at the rate of 7.70% per annum from July 8, 1985.

(C) Lesmur and SCN, SCN as successor in interest to the Can-Leasing joint venture, are hereby entitled to be and are indemnified by said defendants against all claims, costs, expenses, and/or judgments relative to lease acquisition costs, charges, or expenses made by Debbi Fleming, Jack W. Smith, or Ralph Curton, Jr.

(D) Punitive damages in the amount of $100,000.00 (post judgment interest at the rate of 7.70% per annum from the date of July 8, 1985 on $50,000.00 thereof and at the rate of 7.71% per annum from the date of February 14, 1986 on the remaining $50,000.00 thereof).

(E) The costs of this action.

IT IS FURTHER ADJUDGED the defendants, Joe Capozzi, Jack W. Smith, Jan Miller and Raymond Wright are hereby granted judgment against the defendant Lesmur Holdings, Ltd., plus their costs herein.

IT IS FURTHER ADJUDGED all parties herein are to pay their own respective attorneys fees.

DATED this 25th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
MICHAEL E. DANIEL,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 86-C-64-C

NOTICE OF DISMISSAL

COMES NOW the United States of America by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Phil Pinnell, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 26 day of February, 1986.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

PHIL PINNELL
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 26 day of February, 1986, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Michael E. Daniel, 1590 North Knoxville, Tulsa, Oklahoma 74115

Assistant United States Attorney

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 26 1986

U.S. DISTRICT CLERK

R. S. PASSO, Administrator of the Estate of William Watson Wilkins,	)	
Plaintiff,	)	
v.	)	Case No. 84-C-1016-BT
ALLSTATE INSURANCE COMPANY, a foreign corporation,	)	
Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE

Upon the Application of the Plaintiff, the Court hereby orders that this action be, and the same hereby is Dismissed with Prejudice to its refiling.

IT IS SO ORDERED.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

4876j

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM, INC., an Oklahoma corporation,	)	FILED
Plaintiff,	)	FEB 26 1986
vs.	)	Jack C. Silver, Clerk U. S. DISTRICT COURT
KEN HART, an individual, and HART TO HART MOTOR CAR, a corporation,	)	
Defendants.	)	No. 85-C-538-B

AGREED JUDGMENT AND PERMANENT INJUNCTION

This matter came before the Court upon the motion of plaintiff, Thrifty Rent-A-Car System, Inc. ("Thrifty"), for injunctive relief. Having considered said motion and the representations, admissions and stipulations herein, the Court finds that the parties have agreed that plaintiff Thrifty Rent-A-Car System, Inc., has incontestable and protectable rights in the service mark "Thrifty." It is therefore,

ORDERED, that Thrifty's motion for injunctive relief is granted as follows:

That defendants Ken Hart and Hart To Hart Motor Car Co., Inc., its officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them, are hereby enjoined from:

(a) Using the service mark "Thrifty" or any confusingly similar designation, alone or in combination with other words,

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as a trademark, service mark, tradename component or otherwise, to market, advertise or identify any vehicle rental, sales or leasing business or related products or services owned in whole or in part, directly or indirectly by defendants;

(b) Otherwise infringing Thrifty's service marks or trademarks;

(c) Unfairly competing with Thrifty in any manner whatsoever; and

(d) Causing likelihood of confusion, injury to business reputation or dilution of the distinctiveness and value of Thrifty's symbols, marks, or forms of advertisement.

(e) Diverting or attempting to divert any business from Thrifty or any licensee of Thrifty by utilizing any method or means of unfair competition or do or perform, directly or indirectly, any other act injurious or prejudicial to Thrifty's business (which includes, without limitation, the goodwill associated with Thrifty's proprietary marks); and

(f) Making any statement or representations whatsoever, or using any false designation of origin or false description, including, without limitation, any letters or symbols or from doing any other act or thing calculated or likely to cause confusion or mistake in the minds of the trade or the public or to deceive purchasers into the belief that defendants' goods and services are Thrifty's goods and services or come from or are affiliated with Thrifty or are sponsored or approved by Thrifty or come from the same source as Thrifty's goods and services,

and from otherwise competing unfairly with Thrifty and injuring its business reputation.

(g) Defendants shall deliver up to Thrifty or destroy all devices, literature, advertising and other materials bearing the "Thrifty" name.

(h) The parties agree that in the event it becomes necessary to enforce the terms of this Agreed Judgment, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees, incurred as a result of such action.

ORDERED this 25th day of ~~January~~ February, 1986.

Thomas R. Brett
United States District Judge

APPROVED AND AGREED TO:

THRIFTY RENT-A-CAR SYSTEM, INC.

By _____
William E. Lobeck, Jr.
Its President

_____
Ken Hart, Individually

HART TO HART MOTOR CAR CO., INC.

By _____

Its _____

43770/DLK

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FRANK A. ELLIOTT, by his father and guardian, TOM ELLIOTT, Plaintiffs,	)	
vs.	)	No. 84-C-936-E
ST. FRANCIS HOSPITAL and RICHARD BARTLETT, Defendants.	)	

O R D E R

There being no response to the defendant's motion for summary judgment and more than ten (10) days having passed since the filing of the motion and extension of time having been sought by plaintiff having passed, the Court, pursuant to Rule 14(a), as amended effective March 1, 1981, concludes that plaintiff has therefore waived any objection or opposition to the defendant's motion for summary judgment. See Wood Constr. Co. v. Atlas Chemical Indus., Inc., 337 F.2d 888, 890 (10th Cir. 1964). The Court further notes that a pretrial order was to have been submitted on or before February 14, 1986; no pretrial order has been submitted nor extensions of time requested for submission of same.

Additionally the Court has reviewed the substance of defendant's motion and finds it to be meritorious.

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The defendant's motion for summary judgment is therefore granted.

DONE this 26TH day of February, 1986.

JAMES. O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

DESIGN PROPERTIES, INC., a Corporation,	)	
Plaintiff,	)	
VS.	)	NO. 84-1003-E
HARRY JAMES DAVIS and CAROL ANN DAVIS, WESTERN NATIONAL BANK OF TULSA, A National Banking Association, and THE UNITED STATES OF AMERICA, ex rel, THE INTERNAL REVENUE SERVICE,	)	
Defendants.	)	

O R D E R

UPON consideration of the Motion to Remand of Design Properties, Inc. and Western National Bank of Tulsa filed herein, the Court finds that said Motion should be granted.

IT IS, THEREFORE, CONSIDERED, ORDERED AND ADJUDGED that the Motion to Remand of Design Properties, Inc. and Western National Bank of Tulsa should be, and the same is hereby granted.

DONE this 25 day of Feb, 1986.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
GARY W. GATES, JR.;	)	
MELISSA V. GATES;	)	
MINNIE PEARL WARD;	)	
JOHN DOE, Tenant; and	)	
DIVERSIFIED PROPERTY	)	
INVESTMENTS, an Oklahoma	)	
limited partnership,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 85-C-797-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 24th day of February, 1986. The Plaintiff appears by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney; and the Defendants, Gary W. Gates, Jr., Melissa V. Gates, Minnie Pearl Ward, John Doe, Tenant, and Diversified Property Investments, appear not, but make default.

The Court being fully advised and having examined the file herein finds that Defendants, Gary W. Gates, Jr., and Melissa V. Gates, acknowledged receipt of Summons and Complaint on September 5, 1985; that the Defendant, Minnie Pearl Ward, was served with Summons and Complaint on October 30, 1985; that the Defendant, John Doe, Tenant, was served with Summons and Complaint on October 25, 1985; and that the Defendant,

Diversified Property Investments, was served with Summons and Complaint and Amendment to Complaint on January 13, 1986.

It appears that the Defendants, Gary W. Gates, Jr., Melissa V. Gates, Minnie Pearl Ward, John Doe, Tenant, and Diversified Property Investments, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot Twenty-one (21), Block One (1), and the North 7.2 Feet of Reserve joining Lot 21, Block 1 on the South, GRANDVIEW PLACE ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

That on April 20, 1983, Gary W. Gates, Jr., and Melissa V. Gates executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, their mortgage note in the amount of $35,000.00, payable in monthly installments, with interest thereon at the rate of twelve percent (12%) per annum.

That as security for the payment of the above-described note, Gary W. Gates, Jr., and Melissa V. Gates executed and delivered to the United States of America, acting through the Administrator of Veterans Affairs, a mortgage dated April 20, 1983, covering the above-described property. Said mortgage was

recorded on April 21, 1983, in Book 4635, Page 1531, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Gary W. Gates, Jr., and Melissa V. Gates, made default under the terms of the aforesaid mortgage note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Gary W. Gates, Jr., and Melissa V. Gates, are indebted to the Plaintiff in the sum of $39,675.04 as of November 13, 1985, plus interest accruing thereafter at the rate of $11.48 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendants, Gary W. Gates, Jr., and Melissa V. Gates, in the sum of $39,675.04 as of November 13, 1985, plus interest thereafter at the rate of $11.48 per day until judgment, plus interest thereafter at the current legal rate of 7.77 percent per annum until paid, plus the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Gary W. Gates, Jr., and Melissa V. Gates, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

LAYN R. PHILLIPS
United States Attorney

NANCY NESBITT BLEVINS
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLES EUGENE GIBSON,

Plaintiff,

v.

WARDEN GARY MAYNARD, et al.,

Defendants.

No. 85-C-796-C

O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed February 4, 1986 in which the Magistrate recommends that Defendants' Motion to Dismiss be sustained. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

It is therefore Ordered that Defendants' Motion to Dismiss be and is hereby sustained.

It is so Ordered this 24th day of February, 1986.

H. DALE COOK
CHIEF JUDGE

13.

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 25 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

HOUSTON GENERAL INSURANCE CO., a foreign corporation,

Plaintiff,

v.

SHERATON INNS, INC., a Delaware corporation,

Defendant.

No. 81-C-101-B

ORDER OVERRULING PLAINTIFF'S ATTORNEY'S FEE APPLICATION

Before the Court is the question of whether 36 Okl.St.Ann. §3629 requires the award of an attorney's fee to the defendant, Sheraton Inns, Inc., the prevailing party herein.[1/]

Previously, in the case of The First National Bank and Trust Co. of El Reno v. Transamerica Insurance Co., CIV-79-1358-T (USDC W.D.Okl.), the court held that the attorney's fee award portion of §3629 was violative of the Oklahoma Constitution (Const. art. V, §57) because it did not mention attorney's fees in the title to the Act. The case of Gay & Taylor, Inc. v. St. Paul Fire & Marine Ins. Co., 550 F.Supp. 710 (W.D.Okl. 1981), also held §3629 to be unconstitutional under the Oklahoma Constitution for the same reason.

The Tenth Circuit Court of Appeals concluded attorney's fees in a proper case under 36 Okl.St.Ann. §3629(b) are awardable to the prevailing party. Norman's Heritage Real Estate Co. v. Aetna Cas. & Sur. Co., 727 F.2d 911 (10th Cir. 1984). The Oklahoma Court of Appeals opinion in Pierce v. Western Cas. & Sur. Co., 666 P.2d

1/ The parties have agreed that if the defendant is entitled to an award of attorney's fees, a reasonable such fee would be $52,921.00

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> "section, the prevailing party is the insurer in those cases where judgment does not exceed written offer of settlement. In all other judgments the insured shall be the prevailing party. If the insured is the prevailing party, the court in rendering judgment shall add interest on the verdict at the rate of fifteen percent (15%) per year from the date the loss was payable pursuant to the provisions of the contract to the date of the verdict. This provision shall not apply to uninsured motorist coverage."

Jesko v. American-First Title & Tr. Co., 603 F.2d 815 (10th Cir. 1979), involved a suit against a title insurance company for failure to defend title. The plaintiff insured was permitted to recover attorney's fees incurred in defending the title but not the attorney's fees incurred in the subsequent action against the title insurer to enforce coverage. This is analogous to the instant matter. However, §3629 was not mentioned in Jesko, probably because the dispute commenced in 1974 and §3629 was not the law of Oklahoma until October 1, 1977. Concerning the denial of attorney's fees, Jesko stated:

> "Oklahoma law generally does not allow attorney's fees to be assessed as costs unless a statute or contractual arrangement provides otherwise. See, e.g., Goodman v. Norman Bank of Commerce, 565 P.2d 372, 373 (Okl. 1977); Globe & Republic Insurance Co. v. Independent Trucking Co., 387 P.2d 644, 647 (Okl. 1963)..."

Id. at 819.

In the instant matter, the liability insurance contract does not specifically provide for attorney's fees to be awarded to the prevailing party in a suit over coverage. The case before the court is a declaratory judgment action in which Houston General sought a declaration that it was not liable for punitive damages assessed against the defendant Sheraton Inns. Houston General defended the personal injury action and paid the compensatory

1313 (Okl.App. 1985) served as the basis for the Norman's Heritage, supra, ruling. In Pierce, the Oklahoma court held that since the title to the Act mentioned costs the Oklahoma constitutional requirement was met because costs would include attorney's fees.

The plaintiff herein also calls to the Court's attention the unpublished opinion in The First National Bank and Trust Company of El Reno v. Transamerica Insurance Co., Nos. 81-2355 and 81-2432 filed November 8, 1983, by the Tenth Circuit Court of Appeals which overruled the lower court's conclusion that §3629 violated the Oklahoma Constitution because of its title inadequacies, citing Pierce as authority.

Each of the cases of Norman's Heritage, Pierce and The First National Bank and Trust Company of El Reno involved claims for money due the insured under the insuring agreement. Thus, in the appropriate case, attorney's fees are recoverable by the prevailing party under 36 Okl.St.Ann. §3629.

Therefore, the next question is whether §3629 is applicable to the kind of insurance coverage dispute as is involved in the instant matter. Section 3629 provides as follows:

> "A. An insurer shall furnish, upon written request of any insured claiming to have a loss under an insurance contract issued by such insurer, forms of proof of loss for completion by such person, but such insurer shall not, by reason of the requirement so to furnish forms, have any responsibility for or with reference to the completion of such proof or the manner of any such completion or attempted completion.
>
> "B. It shall be the duty of the insurer, receiving a proof of loss, to submit a written offer of settlement or rejection of the claim to the insured within ninety (90) days of receipt of that proof of loss. Upon a judgment rendered to either party, costs and attorney fees shall be allowable to the prevailing party. For purposes of this

damage award, but refused to pay the punitive damages because of a policy exclusion. The court found that because of the law of waiver and estoppel, Houston General was liable to pay the punitive damages.

Houston General urges that no part of §3629 contemplates attorney's fees to either party where the dispute concerns whether a liability policy provides coverage for punitive damage. Houston General contends that §3629 is limited to those cases in which the insured has a policy covering his own property damage loss or other type loss where the insured is required to submit a proof of loss setting forth the event and an itemization of the amount of the loss. The Court agrees with the Houston General contention.

In the instant case, no proof of loss was contemplated to be filed by Sheraton Inns. The injured party suffered personal injury from ingesting deleterious food on Sheraton Inns' premises and the Sheraton Inns notified Houston General of the loss and Houston General provided a defense. When the jury returned with the punitive damages award, in addition to the compensatory award, Houston General sought refuge of its policy exclusion against punitive damages. Section 3629 contemplates the filing of a proof of loss by an insured and within 90 days thereafter a written offer of settlement or rejection by the insurer. In a subsequent legal action the prevailing party is entitled to an award of costs and attorney's fees. If the insured recovers more by judgment than was offered by the insurer, the insured is the prevailing party, and if not, the insurer is. In the instant matter, no proof of loss was filed by Sheraton Inns, and none was contemplated, because Houston General's insurance policy called for the insurer

to provide a defense and to pay within the policy coverage judgments in favor of successful personal injury claimants against the insured, Sheraton Inns.

Section 3629 should be construed strictly because it is in derrogation of the common law which did not permit the award of attorney's fees to the successful litigant. In the case of Philadelphia Gear Corp. v. F.D.I.C., 587 F. Supp. 294 (W.D. Okla. 1984), the court was reviewing Oklahoma statutes relative to the prevailing party's claim an award of attorney's fees was proper on a suit involving a letter of credit. In denying the request for attorney's fees, the court stated:

> "*** First, these statutes are in derogation of the common law rule against awarding fees, see Garner v. City of Tulsa, supra, 651 P.2d 1325; Puckett v. Southeast Plaza Bank, supra, 620 P.2d 461, so they should be narrowly construed, see e.g., In re Adoption of Graves, 481 P.2d 136, 138 (Okl. 1971). Cf. Florida National Bank v. Alfred & Ann Goldstein Foundation, Inc., 327 So.2d 110, 111 (Fla.App. 1976)(interpreting Florida fees and costs statutes in a wrongful dishonor action). See generally 2A Sutherland, Statutes and Statutory Construction §§ 50.01, 50.02 (4th ed. 1973). Second, the statutes clearly enumerate the particular instruments to which they apply, and under the principle of statutory construction expressio unius est exclusio alterius, they should not be broadened by the Court to include others well outside their terms unless the legislature intends otherwise. See In re Arbuckle Master Conservancy District v. Petitti, 474 P.2d 385, 391-92 (Okl. 1970).* * *" (587 F.Supp. at 299)

Section 3629 pertains to insurance contracts for property damage, accident, health, or when a sum of money is payable to the insured in which the filing of proofs of loss or similar document is provided by statute or contract, but does not apply to permit attorney's fees to a prevailing party in a dispute over coverage concerning a general liability policy.

The request for attorney's fee award by Sheraton Inns is hereby denied.

IT IS SO ORDERED, this 20th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

United States District Court

FOR THE

DISTRICT OF KANSAS

CIVIL ACTION FILE NO. 84-1556-K

EDO CORPORATION

vs.

AEROSPACE TECHNOLOGIES, INC.

84-1263-B

JUDGMENT

FILED

FEB 24 1986

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

I, Arthur G. Johnson, Clerk of the United States District Court for the -- District of Kansas, do hereby certify the annexed to be a true and correct copy of the original judgment entered in the above entitled action on January 15, 1986, as it appears of record in my office, and that no notice of appeal from the said judgment has been filed in my office

* and the time for appeal commenced to run on January 15, 1986, upon the entry of the judgment.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of the said Court this 18th day of February, 1986.

ARTHUR G. JOHNSON, Clerk

By R. Thompson Deputy Clerk

R. Thompson

* When no notice of appeal from the judgment has been filed, insert "no notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run on [*insert date*] upon the entry of [If no motion of the character described in Rule 73(a) F.R.C.P. was filed, here insert 'the judgment', otherwise describe the nature of the order from the entry of which time for appeal is computed under that rule.] If an appeal was taken, insert "a notice of appeal from the said judgment was filed in my office on [*insert date*] and the judgment was affirmed by mandate of the Court of Appeals issued [*insert date*]" or "a notice of appeal from the said judgment was filed in my office on [*insert date*] and the appeal was dismissed by the [insert 'Court of Appeals' or 'District Court'] on [*insert date*]", as the case may be.

entered

AO 450 (Rev. 5/85) Judgment in a Civil Case

United States District Court

DISTRICT OF KANSAS

EDO CORPORATION

V.

AEROSPACE TECHNOLOGIES, INC.

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 84-1556-K

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that plaintiff EDO Corporation is granted judgment against defendant Aerospace Technologies, Inc., in the amount of $34,965.00 together with interest at the rate of 18% per annum from and after April 23, 1984.

FILED

JAN 15 1986

ARTHUR G. JOHNSON, CLERK
BY: ..... DEPUTY

ATTEST: A true copy
ARTHUR G. JOHNSON, Clerk
By R. Thompson
Deputy

January 15, 1986
Date

ARTHUR G. JOHNSON
Clerk

R. Thompson
(By) Deputy Clerk

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United States District Court

FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CIVIL ACTION FILE NO. H-82-3464

M-1264-B

RICHARD BURNS

vs.

HIGHT AND BRANHAM CORPORATION AND
RONALD MAX HIGHT, INDV.

JUDGMENT

JAMES E. DUKE, CLERK
U.S. DISTRICT COURT
FEB 24 1986

CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

I, JESSE E. CLARK, Clerk of the United States District Court for the SOUTHERN District of TEXAS, do hereby certify the annexed to be a true and correct copy of the original judgment entered in the above entitled action on January 30, 1985, as it appears of record in my office, and that

* "no notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run 1-30-85 upon the entry of the judgment"

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of the said Court this 13th day of February, 19 86.

JESSE E CLARK, Clerk

By Dan Venting, Deputy Clerk

MCA

* When no notice of appeal from the judgment has been filed, insert "no notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run on [*insert date*] upon the entry of [If no motion of the character described in Rule 73(a) F.R.C.P. was filed, here insert 'the judgment', otherwise describe the nature of the order from the entry of which time for appeal is computed under that rule.] If an appeal was taken, insert "a notice of appeal from the said judgment was filed in my office on [*insert date*] and the judgment was affirmed by mandate of the Court of Appeals issued [*insert date*]" or "a notice of appeal from the said judgment was filed in my office on [*insert date*] and the appeal was dismissed by the [insert 'Court of Appeals' or 'District Court'] on [*insert date*]", as the case may be.

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Entered

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
JAN 30 1985
JESSE E. CLARK, CLERK
BY DEPUTY: R Jones

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RICHARD BURNS, Plaintiff	§	
VS.	§	CIVIL ACTION NO. H-82-3464
HIGHT AND BRANHAM CORPORATION AND RONALD MAX HIGHT, INDIVIDUALLY, Defendants.	§	

AGREED JUDGMENT

On the 30th day of January, 1985, the parties announced to the Court that they had reached a settlement in the above-noted case. The Court is of the opinion that the settlement is fair and equitable and should be entered. It is therefore,

ORDERED, that Plaintiff RICHARD BURNS have and recover of and from Defendants HIGHT AND BRANHAM CORPORATION and RONALD MAX HIGHT, INDIVIDUALLY, the sum of $60,000.00, with interest from the date hereof at the rate of 11% per annum.

It is further ORDERED that costs are taxed against the party incurring same.

SIGNED this 30th day of January, 1985.

UNITED STATES DISTRICT JUDGE

TRUE COPY I CERTIFY
ATTEST:
JESSE E. CLARK, Clerk
By: Dan Cantu
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	
FRANK A. DALE,	)	
	)	
Debtor,	)	
	)	
JOHN B. JARBOE, TRUSTEE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 85-C-608-E
	)	
LAVENA DALE,	)	
	)	
Defendant.	)	

O R D E R

This case comes before the Court on appeal from the judgment entered on June 19, 1985 by the Bankruptcy Court for the Northern District of Oklahoma in an adversary proceeding brought by Trustee John B. Jarboe against Appellant Lavena Dale. In the proceeding in the Bankruptcy Court, Trustee claimed that Debtor's conveyance to Appellant of an interest in real property was voidable under 11 U.S.C. § 544(b) and Sections 104 and 105 of the Uniform Fraudulent Conveyance Act, 24 O.S. 1981 § 101 et seq. After a trial on the merits of Trustee's claim, the Court entered a memorandum opinion containing the Court's findings of fact and conclusions of law finding Debtor's conveyance fraudulent.

The Court found that Debtor conveyed 280 acres of real estate to Appellant on February 22, 1983 in consideration for payment to Debtor of $12,000 from both jointly and separately owned accounts and for Appellant's agreement to support Debtor

for two (2) years. The Court also found that the "majority" of the real estate conveyed was jointly acquired by Debtor and Appellant. Finally, the Court found that the value of Debtor's assets had not been proven sufficiently for the Court to determine whether Debtor was solvent on the date of the transfer. The Court concluded that the consideration received for Debtor's conveyance was inadequate pursuant to 11 U.S.C. § 544(b) and 24 O.S. 1981 § 104, and ordered that the conveyance be set aside and the real estate be included in Debtor's bankruptcy estate.

Appellant's first contention on appeal is that Trustee failed to meet his burden of proof on the issue of insolvency. The Court finds this issue to be dispositive.

Under § 104 of the Uniform Fraudulent Conveyance Act, Trustee had the burden of proving both that Debtor's conveyance was made without a fair consideration and that Debtor was insolvent at the time of the conveyance or was rendered insolvent by the conveyance. Georgia-Pacific Corp. v. Lumber Products Co., 590 P.2d 661, 666 (Okla. 1979). The Bankruptcy Court found that the value of Debtor's assets on the date of transfer "was not sufficiently proven to permit [the] Court to determine solvency ..." Because the Bankruptcy Court did not make a determination regarding Debtor's solvency, the Court's conclusion that Trustee had satisfied his burden under § 104 was erroneous. The judgment of the Bankruptcy Court must therefore be reversed and the proceedings remanded to the Bankruptcy Court for further action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the

judgment of the Bankruptcy Court be and the same hereby is reversed and remanded for further proceedings.

IT IS FURTHER ORDERED that Appellant's motion to stay be denied as moot.

Ordered this 22nd day of January, 1986.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

13

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
PAUL K. GARETSON and CHEMICAL EQUIPMENT CORPORATION,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 85-C-353-C

STIPULATION OF DISMISSAL

COME NOW the Plaintiff, United States of America, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendants, Paul K. Garetson and Chemical Equipment Corporation, by their attorney, Craig A. Coulter, and hereby stipulate and agree that this action is hereby dismissed with prejudice pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney

Craig A. Coulter

CRAIG A. COULTER
Attorney for Defendants
Paul K. Garetson and Chemical
Equipment Corporation

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

IN RE: PETITION OF THE F&M BANK & TRUST COMPANY TO INVOKE JURISDICTION OF THE COURT TO SUPERVISE ADMINISTRATION OF A TRUST	No. 86-C-67-B
GORDON B. CECIL, Second Successor Trustee, Plaintiff, v. RONALD A. SPELMAN, PETER K. MOSER, and W. SCOTT KAUFMANN, all individuals, Defendants.	

FILED
FEB 24 1986
Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

This matter comes before the Court on the Motions to Remand of F&M Bank and Gordon B. Cecil. Defendants have objected thereto. For the reasons set forth below, the Motion to Remand is granted.

The roots of this lawsuit extend back to November 1972, when the Keystone Development Authority ("KDA"), a public trust, was created to promote the development of industry. In February 1973, KDA issued bonds in the amount of $3.2 million which were sold as special obligation bonds. KDA executed a Bond Indenture conveying title to the Trustee Bank [F&M] to KDA facilities, the KDA utility systems and the KDA revenues to be derived from the facilities and utility systems. At the same time, the developer of the site executed a Land Mortgage and Trust Agreement

conveying to F&M, in trust for the benefit of the bondholders, title to all lands in Lake Country Unit One and a second mortgage to lands known as the "Future Development Property." In September 1984, Guaranty Loan and Investment Corporation of Tulsa, Inc., later Republic Bancorporation, Inc., now Sunbelt Bancorporation, Inc., became involved as a purchaser of lot sale contracts of the development. From April 1975 to December 1978, Republic made loans to the developer.

In April 1978, the Trustee Bank [F&M] declared a default under the terms of the Land Mortgage and Trust Agreement. An action was commenced in the District Court of Tulsa County, Oklahoma, when F&M Bank filed a petition to invoke that court's jurisdiction to supervise and administer the trust estate created by the Bond Indenture between KDA and F&M, No. C-78-2286. Thus, the state court has been administering the trust estate for nearly eight years.

In 1980, a class action lawsuit was filed in the United States District Court for the Southern District of California by Ronald Spelman, Peter K. Moser and W. Scott Kaufmann, successor trustees to F&M Bank, suing F&M on 29 counts including various alleged securities violations and pendent state claims. The case was transferred to this Court. Ronald A. Spelman, et al., v. The F&M Bank & Trust Company, et al., No. 80-C-106-BT. Thereafter, F&M moved to dismiss the pendent claims. On July 7, 1981, this Court dismissed the 28 pendent claims. The Court relied on United Mine Workers v. Gibbs, 383 U.S. 715 (1966), which outlines a

two-tiered approach to determining whether a court may exercise pendent jurisdiction. The first tier looks to Article III limitations, while the second tier looks to discretionary considerations. Gibbs noted that federal courts have broad discretion to dismiss claims within their pendent jurisdiction and states discretion to dismiss should be exercised in four circumstances: (1) when consideration of judicial economy, convenience and fairness to the litigants was not present; (2) where a "surer-footed" reading of the applicable law could be obtained in state court; (3) when state issues were found substantially to predominate; or (4) when divergent state or federal theories of relief were likely to cause jury confusion. The Court found that of the 29 counts alleged most concerned state claims of breach of contract, breach of fiduciary duties, malpractice, fraud and accounting. The Court concluded that "The likelihood of jury confusion in treating divergent legal theories of relief justify a severance of state and federal claims."

On April 12, 1985, the District Court for Tulsa County, Oklahoma, removed Ronald A. Spelman, Peter K. Moser and W. Scott Kaufmann as successor trustees of the trust estate and appointed Gordon B. Cecil as Second Successor Trustee. Spelman, Moser and Kaufmann, defendants herein, were ordered by the state court to turn over and remit to the Second Successor Trustee all cash, assets, bank statements, cancelled checks and other pertinent documents of the estate. The defendants were further ordered to make a written report and accounting of all receipts and

expenditures of trust estate assets. On December 27, 1985, the Second Successor Trustee objected to the accounting filed by the defendants, predecessor trustees, and petitioned for a surcharge for monies expended by the defendants without approval of the state court. The Second Successor Trustee seeks a new accounting by the defendant with appropriate documentation and a court order surcharging the defendants for all amounts paid by defendants which were not authorized or approved by the state court.

The present status of litigation stemming from the Keystone Development Authority bonds is this: A lawsuit alleging violations of federal securities laws is pending before this Court, Spelman, et al. v. The F&M Bank & Trust Company, et al., No. 80-C-106-BT. Meanwhile, the state court proceeds with administration of the trust created by the Bond Indenture between KDA and F&M Bank, In Re Petition of the F&M Bank & Trust Company to Invoke Jurisdiction of the Court to Supervise Administration of a Trust, No. C-78-2286. The Court has also been advised that the pendent state claims dismissed by this Court on July 7, 1981, are proceeding in state court. The Second Successor Trustee's Objection to Accounting filed by the Successor Co-Trustees and Petition for Surcharge ("Petition for Surcharge") was brought in the state court action. Defendants have removed the matter to this Court. Plaintiff and F&M Bank seek to have the matter remanded to the state court.

Removal of a case or claim from state court to federal court is governed by 28 U.S.C. §1441 which states in pertinent parts:

> (a)...[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.
>
> (c) Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

Defendants' Petition for Removal asserts that the Second Successor Trustee's Petition for Surcharge is a separate and independent claim or cause of action removable to this Court. The basis for removal is that the parties to the Petition for Surcharge are citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds $10,000 as required by 28 U.S.C. §1332. Absent a specific statutory exception, a claim is removable only if the federal court would have had jurisdiction over the matter as originally filed by the plaintiff. Betar v. De Havilland Aircraft, Ltd., 603 F.2d 30 (7th Cir. 1979), cert. denied, 444 U.S. 1098, reh. denied, 445 U.S. 947; First National Bank v. Aberdeen National Bank, 627 F.2d 843 (8th Cir. 1980). In this instance, this Court does not have original jurisdiction over the Objection to Accounting and Petition for Surcharge for two reasons. First, the Court is barred from asserting jurisdiction over the matter under the doctrine of exclusive jurisdiction. Buck v. Hales, 536 F.2d 1330 (10th Cir. 1976); Swanson v. Bates, 170 F.2d 648, 651 (10th Cir.

1948); Stewart Securities Corp. v. Guaranty Trust Co., 394 F.Supp. 1069, 1071 (W.D.Okla. 1975). See also, Princess Lida v. Thompson, 305 U.S. 456 (1939); Southwestern Bank & Trust Co. v. Metcalf State Bank, 525 F.2d 140 (10th Cir. 1975). Second, removal is improper because the Petition for Surcharge is a part of and a continuation of a prior state court action. It is not a "separate and independent claim." 29 Fed.Proc., L.Ed. §69:6 (1984); Eisenhardt v. Coastal Industries, Inc., 324 F.Supp. 550 (M.D.Pa. 1971).

Under the doctrine of exclusive jurisdiction, where there are two actions in rem, involving the same res, "as between Federal and State courts having concurrent jurisdiction over the subject matter of the suit, the Court which first acquires jurisdiction may maintain it to the exclusion of the other." Stewart, supra, at 1071. "Concurrent jurisdiction of state and federal courts is not possible where the actions are of such a nature as to require possession or control of the subject matter in order to grant the relief requested; i.e., in rem actions." Southwestern Bank, supra, at 142. In Southwestern Bank, the Tenth Circuit held that an action against a trustee which seeks money damages only and which "... does not depend in any way upon possession or control of the trust assets for its determination or for the granting of any relief. . . ." would be considered an in personam action and could proceed in federal court. Id., at 143. Clearly, the instant case is easily distinguished from that noted in Southwestern. The Petition for Surcharge does not seek

money damages, it seeks an accounting of trust assets and reimbursement to the trust of any monies spent by the defendants, the immediate predecessor trustees, which were inappropriate or unauthorized by the state court. Although defendants characterize the Petition for Surcharge as an in personam action, the facts do not support this assertion. The action is not a personal damage suit, it is an action seeking to properly account for the assets of a Trust and protect the Trust against unauthorized depletion of those assets. Thus, the action is an in rem action or, at the very least, a quasi in rem action regarding the Trust Estate. Since the District Court of Tulsa County, Oklahoma, has had jurisdiction over the Trust Estate since 1978, this Court is barred by the doctrine of exclusive jurisdiction from asserting jurisdiction in this matter. On this basis, the Motion to Remand must be sustained.

Even if the doctrine of exclusive jurisdiction did not apply to this case, this matter is still not properly removable from the state court. The Petition for Surcharge is clearly a continuation of the proceedings which have been going on in the state court since 1978. In short, the Petition for Surcharge is not separate and independent from the Trust administration proceeding continuing in state court. In interpreting §1441(c), the Tenth Cicuit has said:

> "The word 'separate' means distinct; apart from; not united or associated. The word 'independent' means not resting on something else for support; self-sustaining; not contingent or conditioned."

Snow v. Powell, 189 F.2d 172 (10th Cir. 1951); see also, Gray v.

New Mexico Military Institute, 249 F.2d 28 (10th Cir. 1957). Clearly, the Petition for Surcharge does not meet this definition of a "separate and independent" claim. It is associated with the ongoing accounting and administration of the Trust Estate in state court. It is a continuation of that action and, therefore, is not properly removable. Eisenhardt, supra, at 551-552. See, Barrow v. Hunton, 99 U.S. 80 (1879), (no federal court jurisdiction over a "supplementary proceeding so connected with the original suit as to form an incident to it, and substantially a continuation of it.") For the reasons stated, it is not necessary for the Court to consider the lack of diversity claim. Therefore, the Motions to Remand are sustained and the matter is hereby remanded to the existing state court trust administration action.

IT IS SO ORDERED, this 24th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PETERS-KERNAN GOLD PARTNERSHIP, an Oklahoma joint venture, Plaintiff,	)	
vs.	)	Case No. 85-C-594-E
RICH INTERNATIONAL ENERGIES, INC., a corporation; J. KEITH McKAY, an individual; DUANE F. BONEHAM, an individual; DENNIS N. JOHNSTONE, an individual; LAWRENCE P. VARDY, an individual; AL VARDY, an individual, Defendants.	)	

JOURNAL ENTRY OF JUDGMENT

Upon the application for default judgment of the plaintiff, Peters-Kernan Gold Partnership, pursuant to Rule 55(b)(2), against defendant Rich International Energies, Inc., a corporation, the Court finds as follows:

1. Defendant Rich International Energies, Inc. is a foreign corporation not licensed to do business within the state of Oklahoma with no designated service agent within the state of Oklahoma. Therefore, pursuant to the provisions of 18 O.S. Section 1.17, the Oklahoma Secretary of State was the proper service agent for defendant Rich International Energies, Inc..

2. Defendant Rich International Energies, Inc., by and through its duly authorized agent, Al Vardy, solicited, offered, and sold the security upon which this lawsuit is based to the plaintiff in Tulsa, Oklahoma, on or about June 8, 1983.

3. The plaintiff caused a true, accurate and correct copy of the Complaint and Summons to be sent by registered mail, return receipt requested, to Rich International Energies, Inc., c/o J. Keith McKay, President, 4771 Lancelot Drive, Richmond, British Columbia, Canada V7C4S4, on or about June 25, 1985, and the Summons and Complaint was actually received by J. Keith McKay on July 2, 1985, according to the return receipt.

4. In addition, the plaintiff caused to be sent by registered mail, return receipt requested, a copy of the Summons and Complaint in this matter to Dennis N. Johnston, Vice President, Rich International Energies, Inc., 4771 Lancelot Drive, Richmond, British Columbia, Canada V7C4S4, on June 25, 1985, and said copy was in fact received on July 2, 1985.

5. Further, the plaintiff caused a copy of the Summons and Complaint to be sent by registered mail, return receipt requested, to J. Keith McKay, President, Rich International Energies, Inc., 2815 West 35th Avenue, Vancouver, British Columbia, Canada, on June 25, 1985, and in fact the Summons and Complaint was received by Mr. McKay on July 7, 1985.

6. Furthermore, pursuant to Oklahoma statute, the plaintiff caused the Oklahoma Secretary of State to be served with two copies of the Summons and Complaint on June 26, 1985. An acknowledgment of receipt of Summons and Complaint was returned to the plaintiff on June 27, 1985, and filed of record in this case. The last known address of the plaintiff corporation was also furnished to the

Oklahoma Secretary of State and that address was 4771 Lancelot Drive, Richmond, British Columbia, Canada V7C4S4.

7. The defendant has wholly, failed, neglected and fused to file any answer or other pleading in this case and has been in default since July 18, 1985.

8. The material allegations set forth in the plaintiff's Complaint are true. Specifically the Court finds that on June 8, 1983, the plaintiff did invest the sum of $7,500.00 in a gold mining venture named Rich Gold No. 1 Limited Partnership; that the interest in the gold mining venture was a security within the meaning of the Securities Act of 1933 and the Oklahoma Securities Act; that the plaintiff invested in the gold mining venture based upon false material representations of the defendant's agent, Al Vardy; that the defendant wholly, failed, neglected and refused to abide by the terms of the security offering and the false and misleading information provided to the plaintiff by defendant constitutes fraud; that the plaintiff has been damaged in the amount of $9,918.75 which represents the amount of its investment plus interest at the rate of ten (10%) percent from and after June 8, 1983, up to January 22, 1986; that the plaintiff is also entitled to punitive damages in the sum of $20,000.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, Peters-Kernan Gold Partnershp, an Oklahoma joint venture, be and the same hereby is, granted judgment against

defendant Rich International Energies, Inc., a corporation, in the sum of $34,918.75, together with interest at the rate of 9.71 (__%) percent from date of judgment until paid and the costs of this action.

s/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

EXCHANGE BANK, Skiatook, Oklahoma,	)	
Plaintiff,	)	
vs.	)	No. 85-C-249-C
THE HARTFORD ACCIDENT & INDEMNITY CO., Hartford, Connecticut,	)	
Defendant.	)	

ORDER

Pursuant to the Stipulation for Dismissal filed herein, this action is dismissed with prejudice, each party to bear its own costs.

Dated this 21 day of Feb, 1986.

s/H. DALE COOK
United States District Judge

C-25
5/85

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILE

FEB 21

JACK C. SILVE
U.S. DISTRICT

MICHAEL DARWIN JAMES

Plaintiff(s),

vs.

No. 84-C-719-C

HOWARD PEEPLES, et al

Defendant(s).

ORDER

Rule 36(a) of the Rules of the United States District Court for the Northern District of Oklahoma provides as follows:

> (a) In any case in which no action has been taken by the parties for six (6) months, it shall be the duty of the Clerk to mail notice thereof to counsel of record or to the parties, if their post office addresses are known. If such notice has been given and no action has been taken in the case within thirty (30) days of the date of the notice, an order of dismissal may in the Court's discretion be entered.

In the action herein, notice pursuant to Rule 36(a) was mailed to counsel of record or to the parties, at their last address of record with the Court, on January 13, 1986. No action has been taken in the case within thirty (30) days of the date of the notice.

Therefore, it is the Order of the Court that this action is in all respects dismissed.

Dated this 21st day of February, 1986.

UNITED STATES DISTRICT JUDGE
H. DALE COOK

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

HARRY E. McPHAIL, JR.,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	No. 84-C-352-C
	)	
OLE GUNNAR SELVAAG, et al.,	)	
	)	
Defendants.	)	

ORDER OF DISMISSAL WITH PREJUDICE

Upon the application of the Plaintiff, Harry E. McPhail, Jr., for dismissal of this case with prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure, and for the reasons stated therein that all of the issues in the present case have been finally resolved, settled and compromised by and between the parties pursuant to a Settlement Agreement and Release dated February 11, 1986, it is hereby

ORDERED that this case is hereby dismissed with prejudice pursuant to Rule 41.

DATED this 21st day of ~~March~~ Feb, 1986.

JUDGE OF THE UNITED STATES
DISTRICT COURT

Entered

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JACKIE LAUGHLIN, Plaintiff, vs. RICK WEAVER, individually and as a Police Officer, City of Sapulpa; and the CITY OF SAPULPA, an Oklahoma Municipal Corporation, Defendants.	)	Case No. 85-C-990-B

FILED
FEB 21 1986
Jack C. Silver, Clerk
U. S. DISTRICT COURT

Notice of DISMISSAL WITH PREJUDICE

COMES NOW, the Plaintiff, JACKIE LAUGHLIN, and dismisses the above-captioned lawsuit with prejudice.

Louis C. Pappas

LOUIS C. PAPPAS
Attorney for Plaintiff
1921 South Boston
Tulsa, Oklahoma 74119
Oklahoma Bar No. 6884

(918) 585-2451

CERTIFICATE OF MAILING

I hereby certify that on the 21ST day of FEB., 1986, I mailed a true and correct copy of the foregoing Dismissal of Action, postage prepaid, to: Mr. Charles M. Gibson, Attorney for Defendants, at 125 East Dewey, P.O. Box 205, Sapulpa, Oklahoma 74067.

Louis C Pappas
LOUIS C. PAPPAS

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LIBERTY NATIONAL BANK AND TRUST COMPANY OF OKLAHOMA CITY,

Plaintiff,

VS.

WILLIAM M. BOORHEM,

Defendant.

§§§§§§§§§§§§

CIVIL ACTION NO.

CA3-85-2326-T

JUDGMENT BY DEFAULT

William M. Boorhem, having been duly served with a summons and a copy of the Complaint of Liberty National Bank and Trust Company of Oklahoma City, and having failed to plead or otherwise defend, the legal time for pleading or otherwise defending having expired and, upon the Motion of Plaintiff, Liberty National Bank and Trust Company of Oklahoma City, judgment is hereby entered against William M. Boorhem in accordance with the request of the Complaint of Liberty National Bank and Trust Company of Oklahoma City.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED, that Liberty National Bank and Trust Company of Oklahoma City have and recover from William M. Boorhem the sum certain of $38,390.52 with interest accruing at the default rate of $17.329 per diem from November 13, 1985 as sworn to in the affidavit of Kenneth S. Klein and as requested in the Complaint

filed herein, as well as costs of Court and such of Plaintiff's attorney's fees as shall be shown to have been incurred in the prosecution of this action, and that Plaintiff have execution therefore.

Signed this 20th day of February, 1986.

Robert B. Maloney
United States District Judge

2047w

AO 132
(Rev. 2/81)

Exemplification Certificate

United States District Court

for the

NORTHERN DISTRICT OF TEXAS

I, NANCY HALL DOHERTY, Clerk of the United States District Court for the NORTHERN District of TEXAS, and keeper of the records and seal thereof, hereby certify that the documents attached hereto are true copies of JUDGMENT BY DEFAULT

now remaining among the records of the Court.
In testimony whereof I hereunto sign my name and affix the seal of said Court, in said District, at DALLAS, TEXAS, this 18th day of APRIL, 19 86.

Nancy Hall Doherty
NANCY HALL DOHERTY, *Clerk.*

I, ROBERT B. MALONEY, United States District Judge for the NORTHERN District of TEXAS, do hereby certify that NANCY HALL DOHERTY whose name is above written and subscribed, is and was at the date thereof, Clerk of said Court, duly appointed and sworn, and keeper of the records and seal thereof, and that the above certificate by him made, and his attestation or record thereof, is in due form of law.

APRIL 18, 19 86.

Robert B. Maloney
ROBERT B. MALONEY, *United States District Judge.*

I, NANCY HALL DOHERTY, Clerk of the United States District Court for the NORTHERN District of TEXAS, and keeper of the seal thereof, hereby certify that the Honorable ROBERT B. MALONEY whose name is within written and subscribed, was on the 20TH day of FEBRUARY 19 86, and now is Judge of said court, duly appointed, confirmed, sworn, and qualifed; and that I am well acquainted with his handwriting and official signature and know and hereby certify the same within written to be his.

In testimony whereof I hereunto sign my name, and affix the seal of said Court at the city of DALLAS TEXAS, in said State, on this 18th day of APRIL, 19 86.

Nancy Hall Doherty
NANCY HALL DOHERTY, *Clerk.*

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

RAY CHARLES CAROLINA,

Plaintiff,

v.

WARDEN TIM WEST, et al.,

Defendant.

No. 85-C-487-C

O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed January 28, 1986 in which the Magistrate recommends that this case be dismissed for failure to state a claim upon which relief may be granted. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

It is therefore Ordered that this case be and hereby is dismissed for failure to state a claim upon which relief may be granted.

It is so Ordered this 20th day of February, 1986.

H. DALE COOK
CHIEF JUDGE

9

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

PETER J. McMAHON, JR.,

Plaintiff,

v.

No. 85-C-6-C

FRANK THURMAN, SHERIFF, et al.,

Defendants.

O R D E R

The Court has for consideration the Findings and Recommendations of the Magistrate filed January , 1986 in which the Magistrate recommended that this case be dismissed. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Findings and Recommendations of the Magistrate should be and hereby are affirmed and adopted by the Court.

It is therefore Ordered that this case be and is hereby dismissed.

It is so Ordered this 20 day of February, 1986.

(Signed) H. Dale Cook

H. DALE COOK
CHIEF JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 20 1986

Jack C. Silver, Clerk
U.S. DISTRICT COURT

WILLIAM R. POWELL,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

No. 85-C-820-C
No. 85-C-816-B

ORDER

Plaintiff William R. Powell has brought an action pursuant to 42 U.S.C. § 1983 in Case No. 85-C-820-C, wherein the named Defendant is the Department of Corrections. The same Plaintiff, in Case No. 85-C-816-B, filed an application for a writ of mandamus raising issues similar to those in Plaintiff's § 1983 claim. By Order of the Court these cases have been consolidated.

In order to state a claim under 42 U.S.C. § 1983 Plaintiff must establish that Defendants, acting under color of state law, deprived Plaintiff of rights, privileges or immunities secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 525, 101 S.Ct. 1908 (1981). Plaintiff alleges (1) that he is segregated from the general prison population; (2) that he is denied the right to visit with his family; (3) that he is not allowed to attend worship services; (4) that he is denied his rights to equal protection in that no other homosexual men have been removed from the general population and tested for the same antibody; (5) that he is denied adequate physical exercise; (6) that he is under strict supervision during exercise; and (7)

that he has been denied access to a law library. Plaintiff's request for relief includes (1) release from the custody of the Department of Corrections; (2) allowing Plaintiff to return to the general population of the institution; (3) transfer to a minimum security institution; and (4) damages in the amount of $105,000.00. In his application for writ of mandamus Plaintiff also requests that he be classified for work release.

Following a telephone status conference before the Magistrate the Defendants were ordered to submit an answer together with a special report no later than 60 days from the date of the Order, October 29, 1985. On January 2, 1986 Plaintiff filed a motion for default judgment on the grounds that Defendants had failed to answer or plead as ordered by the Court. It appears that the docket sheet in this case erroneously states that Defendants were given until November 29, 1985 in which to submit their answer and special report; however, the Order Requiring Special Report actually gave Defendants until December 30, 1985 to file their report. Defendants have complied with this court's order by timely filing their answer and special report. Plaintiff's motion for entry of default judgment is therefore denied.

The Special Report prepared by the Department of Corrections (D.O.C.) indicates that upon being received into D.O.C. custody Plaintiff, an admitted homosexual, underwent a routine medical examination during which he informed the D.O.C. staff physician that he had possibly been exposed to the HTLV III virus. (HTLV III has been identified as the cause of Acquired Immune Deficiency Syndrome). A test was performed on Plaintiff which

indicated positive for exposure to the virus. Thereafter Department of Corrections officials determined that it was necessary to isolate Plaintiff from the general prison population to prevent a possible spread of the AIDS virus and to protect Plaintiff from the risk of assault by other inmates. The action was not taken for punitive reasons.

Plaintiff complains that he is being segregated from the general population. Plaintiff, however, does not have a Federal constitutional right to be placed in the general prison population. The United States Supreme Court in Hewitt v. Helms, 459 U.S. 460 (1983) considered a similar prisoner complaint. The prisoner respondent in Hewitt had been removed from the general prison population and confined to administrative segregation within the prison pending an investigation into his role in a prison riot. Justice Rehnquist, writing for the Court, reemphasized its position that prison officials have broad administrative and discretionary authority over the prisons they manage. Quoting Price v. Johnston, 334 U.S. 266, 285 (1948) that "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights," the court rejected the argument that the Due Process clause implicitly creates an interest in being confined in the general population rather than in administrative segregation quarters. 459 U.S. at 466-67.

As long as the conditions or degree of confinement is within the purview of the sentence imposed on him and is not otherwise violative of the constitution, the Due Process clause does not subject an inmate's treatment by prison authorities to judicial review. 459 U.S. at 468.

The decision to segregate Plaintiff from other inmates was based upon legitimate objectives: to prevent the possible spread of a deadly infectious disease and to protect Plaintiff from assault by other inmates. The conditions of Plaintiff's isolated confinement do not violate any right created by the U. S. Constitution. The Special Report shows that he is provided limited access to all programs and services at the institution. He is allowed to work in the infirmary. The Chaplain visits the medical unit once a week and upon request. Plaintiff is allowed to exercise both in the medical unit and out of doors when weather permits. Defendants deny that Plaintiff is not being allowed access to visitation and have submitted to the Court a page from a recent visitor's log documenting a September 21st visit by Plaintiff's parents. Since Plaintiff does not have a constitutional right to be placed in the general population and the conditions of Plaintiff's confinement are not violative of his constitutional rights, Plaintiff's claim on this basis should be denied.

Having considered Plaintiff's claim that his first amendment freedom of religion rights are being violated, the Court finds such claim to be without merit. Prison regulations which are alleged to violate prisoners' first amendment rights must be analyzed in terms of the legitimate policies and goals of the institution involved. Pell v. Procunier, 417 U.S. at 822; Bell v. Wolfish, 441 U.S. 520, 547 (1979).

Plaintiff contends that his first amendment rights have been violated in that he is prohibited from attending group worship services. The Supreme Court has noted that many first amendment associational rights must be curtailed if in the informed discretion of prison officials, such associations would likely result in disruption to prison order. Jones v. North Carolina Prison Union, 433 U.S. 119 (1977).

The Court finds that the restrictions placed on Plaintiff's right to worship are reasonable and in keeping with the prison's goal of maintaining the health of the prisoners and in protecting this Plaintiff from threatened harm. Plaintiff has not been denied his right to worship. In fact, he has regular access to the prison chaplain. The fact that he may not worship with the rest of the prison population does not, under these circumstances, rise to the level of a constitutional violation.

Plaintiff further asserts that he has been denied equal protection of law because no other homosexual male has been removed from the general population and tested for the HTVL III antibody. Equal protection requirements will have been met if all members of the class (inmates who are known carriers of HTVL III) are treated equally and if the classification is not arbitrary. McLaughlin v. Florida, 379 U.S. 184 (1964). Plaintiff's classification is based upon the presence of HTLV III and not on his sexual orientation. Prison officials state that they do not, as a matter of policy, examine every male homosexual

prisoner for the HTVL III virus. Plaintiff was tested for the antibody after he advised the medical staff that he may have been exposed to HTVL III. Plaintiff has not shown that he is treated any differently from other prisoners who are also HTVL III carriers or from other prisoners who are segregated from the general population for medical reasons. Therefore, Plaintiff's Equal Protection claim must be denied.

Plaintiff further contends that he has been denied access to the courts as a result of Defendants' conditioning his transfer to an institution with a law library on Plaintiff's continued segregation from the general population while using the law library. Plaintiff states the he declined Defendants' transfer offer "under mental duress."

The constitutional right of access to the courts requires prison officials to provide prisoners with adequate law libraries or adequate assistance of persons trained in the law. Bounds v. Smith, 430 U.S. 817 (1977). The Supreme Court in Bounds upheld North Carolina's plan which established seven law libraries across the state then transferred prisoners upon request to institutions containing a library. A similar plan is implemented in Oklahoma. The fact that Plaintiff turned down the offer to transfer him to an institution with library facilities does not render the state's law library program inadequate. The Court finds that Plaintiff's right of access to the courts has not been violated.

Having carefully reviewed Plaintiff's Complaint, the Court finds that Plaintiff has failed to allege any facts which amount to a deprivation of his rights guaranteed under the Constitution or laws of the United States. It is therefore Ordered that Defendant's Motion to Dismiss Plaintiff's civil rights complaint and petition for Writ of Mandamus be and is hereby granted.

It is so Ordered this 20th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

FILED

FEB 20 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JACKIE LEE GREEN,

Plaintiff,

vs.

ROD BAKER,

Defendant.

No. 85-C-1077-B

O R D E R

Upon plaintiff's motion to dismiss with the right to refile, this matter is hereby dismissed without prejudice.

IT IS SO ORDERED this 20th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

1

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 20 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CLARK EQUIPMENT CREDIT CORPORATION, a corporation,	)	
Plaintiff,	)	
vs.	)	No. 85-C-1073-E
ADVANCE MACHINERY COMPANY,	)	
Defendant.	)	

ORDER

On this 19th day of February, 1986 the above matter came on for hearing upon the Stipulation for Dismissal with Prejudice filed herein by Plaintiff Clark Equipment Credit Corporation and Defendant Advance Machinery Company. For good cause being shown the Court finds, and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff's action against Defendant and the Defendant's Counterclaim against the Plaintiff both be and the same are hereby dismissed with prejudice to the filing of any future claim, each party herein to bear their own costs incurred.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

7

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CARL ROBINSON,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 85-C-1053-E

AGREED JUDGMENT

This matter comes on for consideration this 26th of January, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Carl Robinson, appearing pro se.

The Court, being fully advised and having examined the file herein, finds that the Defendant, Carl Robinson, acknowledged receipt of Summons and Complaint on 11-26-86, 1986. The Defendant has not filed an Answer but in lieu thereof has agreed that he is indebted to the Plaintiff in the amount alleged in the Complaint and that judgment may accordingly be entered against Carl Robinson in the amount of $5,575.00, plus accrued interest of $906.27 as of October 11, 1985, plus interest at the rate of 7 percent per annum from October 11, 1985, until judgment, plus interest thereafter at the legal rate from the date of judgment until paid, plus the costs of this action.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Carl Robinson, in the amount of $5,575.00, plus accrued interest of $906.27 as of October 11, 1985, plus interest at the rate of 7 percent per annum from October 11, 1985, until judgment, plus interest thereafter at the current legal rate of 7.71% percent from the date of judgment until paid, plus the costs of this action.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

PHIL PINNELL
Assistant U.S. Attorney

CARL ROBINSON

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 20 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
BRENT A. HAUGLUND,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 85-C-1050-B

DEFAULT JUDGMENT

This matter comes on for consideration this 20th day of February, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Brent A. Hauglund, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Brent A. Hauglund was served with Summons and Complaint on January 10, 1986. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Brent A. Hauglund, for the principal sum of $12,264.44, plus interest at the rate of 4 percent per annum on the unpaid

principal balance from May 31, 1984, until judgment, plus interest thereafter at the current legal rate of 7.71 percent per annum until paid, plus costs of this action.

/s/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

EVELYN TYLER,	)	
	)	
Plaintiff,	)	No. 85-C-1011-C
	)	
vs.	)	
	)	
F & M BANK & TRUST COMPANY,	)	
	)	
Defendant.	)	

JUDGMENT

This Court having made an Order on January 14, 1986, granting the defendant, the F & M Bank & Trust Company's Motion to Dismiss the Plaintiff's Complaint on the grounds that it fails to state a claim upon which relief may be granted, and further, having made an Order on January 29, 1986, granting the Motion for Default Judgment on said defendant's Counterclaim, it is therefore,

ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint is hereby dismissed against the defendant;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendant, the F & M Bank & Trust Company is hereby awarded judgment against the Plaintiff, Evelyn Tyler, on said Defendant's Counter-Claim, in the amount of $2,290.01 plus interest after entry of judgment at the rate of 17.92%, or in the amount of $1.12 per diem, until fully paid, plus costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff, Evelyn Tyler, immediately turn over and deliver to the defendant the F & M Bank & Trust Company, at 1330 S. Harvard, Tulsa, Oklahoma, the following described property:

1976 Chevrolet Corvette S/N 1Z237L65400688;

and that upon delivery of such property to the defendant, defendant's security interest in said property be foreclosed according to law, and the proceeds received from such foreclosure sale be applied first against the costs and attorneys fees awarded to the Defendant; secondly, against the judgment herein awarded to the Defendant, with the remaining proceeds, if any, to be paid into the registry of the Court to await the further Order of the Court.

DATED this 20th day of February, 1986.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM;

John A. Burkhardt
BOONE, SMITH, DAVIS & HURST
Attorneys for F & M Bank & Trust Company

Gary L. Richardson & Associates
Attorneys for Evelyn Tyler

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BROADCAST MUSIC, INC., Plaintiff,	)	
vs.	)	No. 85-C-979B
LITTLE WING, INC.; LARRY E. SHAEFFER; C. D. SHAEFFER and WILMA SHAEFFER d/b/a LITTLE WING PRODUCTIONS, Defendants.	)	

FEB 20 1986

ORDER

The Court has before it the Joint Motion to Dismiss with Prejudice the above styled and numbered action duly executed by the attorneys for the plaintiff and the defendants, pursuant to the Federal Rules of Civil Procedure 41(2)(2) upon the grounds that the parties have settled this action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the above captioned case be and is dismissed with prejudice with each party bearing its own expenses, costs and attorney's fees.

Dated this 20th day of February, 1986.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FEB 20 1985

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
O.K. GRAIN, a division of CONAGRA, INC., OKLAHOMA-KANSAS GRAIN CORPORATION, and COLLINSVILLE LIVESTOCK EXCHANGE,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 85-C-58-C

STIPULATION OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, the Defendant, Oklahoma-Kansas Grain Corporation, by its attorney Gregory A. Guerrero, and the Defendant, O.K. Grain, a division of Conagra, Inc., by its attorney Carol L. Swenson, and pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, hereby stipulate and agree that the claims of the Plaintiff against Defendants, Oklahoma-Kansas Grain Corporation, and O.K. Grain, a division of Conagra, Inc., be dismissed.

It it further stipulated and agreed that this dismissal shall have no effect on any claims that Defendent, O.K. Grain, a division of Conagra, Inc., may have against the Defendent,

Oklahoma-Kansas Grain Corporation arising out of the subject matter of this action.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

NANCY NESBITT BLEVINS
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

GREGORY A. GUERRERO
Attorney for Oklahoma-Kansas
Grain Corporation

CAROL L. SWENSON
Attorney for O.K. Grain, a
division of Conagra, Inc.

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
v.	)	No. 83-C-609-B
WARREN F. YOUNG and BEVERLY A. YOUNG, Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW
RE DEFENDANTS' ATTORNEY'S FEE AND
EXPERT FEE APPLICATION

The defendants as the prevailing parties have sought attorney's fees and expert witness expense pursuant to 26 U.S.C. §7430. On September 3, 1985, the court held a hearing on the application. After having heard the evidence, heard argument of counsel and considered the applicable legal authority, the court enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. 26 U.S.C. §7430 permits the award of litigation costs, including attorney's fees and expert fees to the prevailing party in a case of this kind if the taxpayer has exhausted his administrative remedies, has substantially prevailed with respect to the amount in controversy, and further establishes that the position of the United States in the civil proceeding was unreasonable. Clearly, the record and the court's Findings of Fact and Conclusions of Law entered September 18, 1984, establish that the taxpayer exhausted administrative remedies,

substantially prevailed with respect to the amount in controversy, so the factual question presented is whether defendants have established that the position of the government in the civil proceeding was unreasonable.

2. From both a factual and legal standpoint, three theories of deductibility or nondeductibility were vigorously litigated herein. In alternative theories, the defendants urged that Western Sanitation Company ("WSC") was a sole proprietorship and that expenses of WSC were deductible under §162 of the Internal Revenue Code; the defendants also urged that if it were determined WSC was a corporation, the Warren F. Young loans of money to the corporation were deductible as bad debts when not repaid under §166 of the Internal Revenue Code; and, the theory adopted by the Court, that payment of the corporate debts were ordinary and necessary expenses of the defendant, Warren F. Young, in order to protect his reputation as an attorney and thereby deductible under §162 of the Internal Revenue Code. Each theory presented legitimate factual disputes and justifiable legal arguments, thus preventing the position of the United States in the civil proceeding from being characterized as unreasonable. The case was one involving legitimate factual and legal disputes giving rise to a good faith justiciable controvery.

CONCLUSIONS OF LAW

1. The record does not reflect nor have the defendants sustained the burden of establishing that the position of the

United States in the civil proceeding was unreasonable. 26 U.S.C. §7430(a), §7430(b)(1) and (2), §7430(c)(2).

2. Any Finding of Fact herein which might be properly characterized a Conclusion of Law is hereby incorporated.

3. The defendants' motion to award attorney and expert fees is hereby denied.

DATED this 19th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RETHA MAE BURKDOLL STEWART, Plaintiff, vs. GRACE PETROLEUM CORPORATION, KERR-McGEE CORPORATION, and DOES I THROUGH XXX, Defendants.	)	No. 85-C-11-B

FILED
FEB 20 1986
JACK C. SILVER, CLERK
U.S. DISTRICT COURT

ORDER

This matter comes before the Court on the findings of fact and recommendations of the United States Magistrate, filed February 6, 1986. The Magistrate found that plaintiff's refusal to comply with discovery was wilfull and committed after having been advised by her counsel that a potential consequence of her failure to give a deposition was dismissal of this action. The Magistrate recommended that the action be dismissed without prejudice, that in the event plaintiff seeks to refile the action, she shall be required to pay the costs to be fixed by the Court upon refiling, and that any refiling must be done in the United States District Court for the Northern District of Oklahoma. There being no objections filed within the prescribed ten (10) day period, the objections are deemed waived. This matter is hereby dismissed without prejudice. In the event plaintiff seeks to refile this action, such refiling shall be subject to the conditions specified above.

IT IS SO ORDERED this 20th day of February, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JERRY ALLEN TAYLOR, Plaintiff, v. T K INTERNATIONAL, INC., ET AL. Defendants.	)	Case No. 83-C-387-C

JOURNAL ENTRY OF JUDGEMENT

This cause having come before this Court for jury trial on February 12-14, 1986, and the jury having duly heard the case and entered its verdict for T K International, Inc. and against Jerry Allen Taylor on the claims by Mr. Taylor for racial discrimination and on the claims by T K International, Inc. for defamation, malicious prosecution and abuse of process, it is, therefore,

ORDERED, ADJUDGED AND DECREED that:

1) Judgement be entered in favor of T K International, Inc. and against Jerry Allen Taylor on the racial discrimination claims of Mr. Taylor.

2) Judgement be entered in favor of T K International, Inc. and against Jerry Allen Taylor on the issue of liability on its counterclaims against Mr. Taylor for defamation, abuse of process and malicious prosecution, with trial of damages to be held at such later time as is set by the Court.

IT IS FURTHER ORDERED that the crossclaim by T K International, Inc. against Local Union 620 for contribution in the event that Mr. Taylor prevailed on his race discrimination claims be dismissed as moot.

So Ordered this 20 day of February, 1986.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 20 1986

Clerk, U.S. DISTRICT COURT

WILLIAM R. POWELL,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

No. 85-C-820-C
No. 85-C-816-B

ORDER

Plaintiff William R. Powell has brought an action pursuant to 42 U.S.C. § 1983 in Case No. 85-C-820-C, wherein the named Defendant is the Department of Corrections. The same Plaintiff, in Case No. 85-C-816-B, filed an application for a writ of mandamus raising issues similar to those in Plaintiff's § 1983 claim. By Order of the Court these cases have been consolidated.

In order to state a claim under 42 U.S.C. § 1983 Plaintiff must establish that Defendants, acting under color of state law, deprived Plaintiff of rights, privileges or immunities secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 525, 101 S.Ct. 1908 (1981). Plaintiff alleges (1) that he is segregated from the general prison population; (2) that he is denied the right to visit with his family; (3) that he is not allowed to attend worship services; (4) that he is denied his rights to equal protection in that no other homosexual men have been removed from the general population and tested for the same antibody; (5) that he is denied adequate physical exercise; (6) that he is under strict supervision during exercise; and (7)

that he has been denied access to a law library. Plaintiff's request for relief includes (1) release from the custody of the Department of Corrections; (2) allowing Plaintiff to return to the general population of the institution; (3) transfer to a minimum security institution; and (4) damages in the amount of $105,000.00. In his application for writ of mandamus Plaintiff also requests that he be classified for work release.

Following a telephone status conference before the Magistrate the Defendants were ordered to submit an answer together with a special report no later than 60 days from the date of the Order, October 29, 1985. On January 2, 1986 Plaintiff filed a motion for default judgment on the grounds that Defendants had failed to answer or plead as ordered by the Court. It appears that the docket sheet in this case erroneously states that Defendants were given until November 29, 1985 in which to submit their answer and special report; however, the Order Requiring Special Report actually gave Defendants until December 30, 1985 to file their report. Defendants have complied with this court's order by timely filing their answer and special report. Plaintiff's motion for entry of default judgment is therefore denied.

The Special Report prepared by the Department of Corrections (D.O.C.) indicates that upon being received into D.O.C. custody Plaintiff, an admitted homosexual, underwent a routine medical examination during which he informed the D.O.C. staff physician that he had possibly been exposed to the HTLV III virus. (HTLV III has been identified as the cause of Acquired Immune Deficiency Syndrome). A test was performed on Plaintiff which

indicated positive for exposure to the virus. Thereafter Department of Corrections officials determined that it was necessary to isolate Plaintiff from the general prison population to prevent a possible spread of the AIDS virus and to protect Plaintiff from the risk of assault by other inmates. The action was not taken for punitive reasons.

Plaintiff complains that he is being segregated from the general population. Plaintiff, however, does not have a Federal constitutional right to be placed in the general prison population. The United States Supreme Court in Hewitt v. Helms, 459 U.S. 460 (1983) considered a similar prisoner complaint. The prisoner respondent in Hewitt had been removed from the general prison population and confined to administrative segregation within the prison pending an investigation into his role in a prison riot. Justice Rehnquist, writing for the Court, re-emphasized its position that prison officials have broad administrative and discretionary authority over the prisons they manage. Quoting Price v. Johnston, 334 U.S. 266, 285 (1948) that "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights," the court rejected the argument that the Due Process clause implicitly creates an interest in being confined in the general population rather than in administrative segregation quarters. 459 U.S. at 466-67.

As long as the conditions or degree of confinement is within the purview of the sentence imposed on him and is not otherwise violative of the constitution, the Due Process clause does not subject an inmate's treatment by prison authorities to judicial review. 459 U.S. at 468.

The decision to segregate Plaintiff from other inmates was based upon legitimate objectives: to prevent the possible spread of a deadly infectious disease and to protect Plaintiff from assault by other inmates. The conditions of Plaintiff's isolated confinement do not violate any right created by the U. S. Constitution. The Special Report shows that he is provided limited access to all programs and services at the institution. He is allowed to work in the infirmary. The Chaplain visits the medical unit once a week and upon request. Plaintiff is allowed to exercise both in the medical unit and out of doors when weather permits. Defendants deny that Plaintiff is not being allowed access to visitation and have submitted to the Court a page from a recent visitor's log documenting a September 21st visit by Plaintiff's parents. Since Plaintiff does not have a constitutional right to be placed in the general population and the conditions of Plaintiff's confinement are not violative of his constitutional rights, Plaintiff's claim on this basis should be denied.

Having considered Plaintiff's claim that his first amendment freedom of religion rights are being violated, the Court finds such claim to be without merit. Prison regulations which are alleged to violate prisoners' first amendment rights must be analyzed in terms of the legitimate policies and goals of the institution involved. Pell v. Procunier, 417 U.S. at 822; Bell v. Wolfish, 441 U.S. 520, 547 (1979).

Plaintiff contends that his first amendment rights have been violated in that he is prohibited from attending group worship services. The Supreme Court has noted that many first amendment associational rights must be curtailed if in the informed discretion of prison officials, such associations would likely result in disruption to prison order. Jones v. North Carolina Prison Union, 433 U.S. 119 (1977).

The Court finds that the restrictions placed on Plaintiff's right to worship are reasonable and in keeping with the prison's goal of maintaining the health of the prisoners and in protecting this Plaintiff from threatened harm. Plaintiff has not been denied his right to worship. In fact, he has regular access to the prison chaplain. The fact that he may not worship with the rest of the prison population does not, under these circumstances, rise to the level of a constitutional violation.

Plaintiff further asserts that he has been denied equal protection of law because no other homosexual male has been removed from the general population and tested for the HTVL III antibody. Equal protection requirements will have been met if all members of the class (inmates who are known carriers of HTVL III) are treated equally and if the classification is not arbitrary. McLaughlin v. Florida, 379 U.S. 184 (1964). Plaintiff's classification is based upon the presence of HTLV III and not on his sexual orientation. Prison officials state that they do not, as a matter of policy, examine every male homosexual

prisoner for the HTVL III virus. Plaintiff was tested for the antibody after he advised the medical staff that he may have been exposed to HTVL III. Plaintiff has not shown that he is treated any differently from other prisoners who are also HTVL III carriers or from other prisoners who are segregated from the general population for medical reasons. Therefore, Plaintiff's Equal Protection claim must be denied.

Plaintiff further contends that he has been denied access to the courts as a result of Defendants' conditioning his transfer to an institution with a law library on Plaintiff's continued segregation from the general population while using the law library. Plaintiff states the he declined Defendants' transfer offer "under mental duress."

The constitutional right of access to the courts requires prison officials to provide prisoners with adequate law libraries or adequate assistance of persons trained in the law. Bounds v. Smith, 430 U.S. 817 (1977). The Supreme Court in Bounds upheld North Carolina's plan which established seven law libraries across the state then transferred prisoners upon request to institutions containing a library. A similar plan is implemented in Oklahoma. The fact that Plaintiff turned down the offer to transfer him to an institution with library facilities does not render the state's law library program inadequate. The Court finds that Plaintiff's right of access to the courts has not been violated.

Having carefully reviewed Plaintiff's Complaint, the Court finds that Plaintiff has failed to allege any facts which amount to a deprivation of his rights guaranteed under the Constitution or laws of the United States. It is therefore Ordered that Defendant's Motion to Dismiss Plaintiff's civil rights complaint and petition for Writ of Mandamus be and is hereby granted.

It is so Ordered this 20th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CHICAGO & NORTHWESTERN TRANSPORTATION COMPANY,	)	
Plaintiff,	)	
vs.	)	Case No. 85-C-103-E
TRACKWORK SERVICES, INC.,	)	
Defendant.	)	

STIPULATION FOR DISMISSAL

Pursuant to Rule 41 of the Federal Rules of Civil Procedure, the parties hereby stipulate to a dismissal with prejudice of this action, all parties herein being responsible for the payment of their own fees and expenses herein.

s/c

HUGH D. RICE
RAINEY, ROSS, RICE & BINNS
735 First National Center West
Oklahoma City, Oklahoma 73102
(405) 235-1356

ATTORNEY FOR PLAINTIFF,
CHICAGO & NORTHWESTERN
TRANSPORTATION COMPANY

s/c

M. D. BEDINGFIELD
CHAPEL, WILKINSON, RIGGS, ABNEY
& HENSON
502 West Sixth Street
Tulsa, Oklahoma 74119
(918) 587-3161

ATTORNEYS FOR DEFENDANT,
TRACKWORK SERVICES, INC.

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
JIMMIE D. WILLIS,)
)
Defendant.) CIVIL ACTION NO. 85-C-918-C

ORDER OF DISMISSAL

Now on this 18 day of February, 1986, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve him have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Jimmie D. Willis, be and is dismissed without prejudice.

[Signed] H. Dale Cook
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

SPEARS CONSULTING GROUP, LTD. and VENTURE CONSULTANTS, INC.	)	
Plaintiffs,	)	
v.	)	No. 84-C-707-E
CHARLES S. HOLMES,	)	
Defendant.	)	

ORDER AND DISMISSAL WITH PREJUDICE

It appearing to the Court that all matters and controversy have been settled, compromised, released and extinguished by and between the parties, and based upon the stipulation,

IT IS ORDERED AND ADJUDGED that the above entitled cause be, and it is hereby, dismissed, without cost to Plaintiffs or Defendant, and with prejudice to the Plaintiffs.

Dated this 18th day of February, 1986.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

DESIGN PROPERTIES, INC., a Corporation,	)	
Plaintiff,	)	
VS.	)	NO. 84-1003-E
HARRY JAMES DAVIS and CAROL ANN DAVIS, WESTERN NATIONAL BANK OF TULSA, A National Banking Association, and THE UNITED STATES OF AMERICA, ex rel, THE INTERNAL REVENUE SERVICE,	)	
Defendants.	)	

JOINT DISMISSAL WITHOUT PREJUDICE AS TO THE DEFENDANTS HARRY JAMES DAVIS AND CAROL ANN DAVIS

COMES NOW the Plaintiff, Design Properties, Inc., by and through its attorneys of record, Robinson, Boese & Davidson by Kenneth M. Smith, and the Defendant and Cross-Claimant, Western National Bank of Tulsa, by and through its attorney of record, John S. Zarbano, and herewith dismisses the above styled and numbered cause of action without prejudice as against the Defendants Harry James Davis and Carol Ann Davis.

Respectfully submitted,

ROBINSON, BOESE & DAVIDSON

BY: Kenneth M. Smith

Kenneth M. Smith, OBA #8374
P. O. Box 1046
Tulsa, Oklahoma 74101
(918) 583-1232

Attorneys for Plaintiff
Design Properties, Inc.

JOHN S. ZARBANO, OBA #9989
P. O. Box 702680
Tulsa, Oklahoma 74170
(918) 749-7981

Attorneys for Defendant
and Cross-Claimant
Western National Bank
of Tulsa

CERTIFICATE OF MAILING

I hereby certify that on the 19th day of February, 1986, a true and correct copy of the above and foregoing Joint Dismissal Without Prejudice as to the Defendants Harry James Davis and Carol Ann Davis was mailed with proper postage prepaid thereon to entitle the same to due passage in the United States mail to:

Harry J. and Carol A. Davis
2624 East 74th
Tulsa, Oklahoma 74136

KENNETH M. SMITH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

McNABB COAL COMPANY, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
DONALD HODEL, Acting Secretary of the United States Department of the Interior, et al.,	)	
	)	
Defendants.	)	No. 85-C-1115-E

Notice of DISMISSAL

COMES NOW, the plaintiff and dismisses its Complaint without Prejudice as against the defendants named herein.

KEN RAY UNDERWOOD
Attorney for Plaintiff
1424 Terrace Drive
Tulsa, OK 74104
(918) 744-7200

and

GEORGE W. UNDERWOOD
6363 East 31st
Tulsa, OK 74135
(918) 836-6511

CERTIFICATE OF MAILING

I, Ken Ray Underwood, hereby certify that on the _____ day of February, 1986, I mailed a true and correct copy of the above and foregoing Dismissal with proper postage thereon fully prepaid to: Donald Hodel, Acting Secretary of the U.S. Department of Interior, "C" Street Between 18th and 19th Streets NW, Washington, D.C. 20240, Mr. Jed Christensen, Acting Director of the Office of Surface Mining, U.S. Department of Interior, 1951 Constitution Avenue NW, Washington, D.C. 20240 and Gerald A. Thornton, U.S. Department of Interior, Office of Regional Solicitor, Southwest Region, P. O. Box 3156, Tulsa, OK 74104 and Phillip Pinnell, Assistant U.S. Attorney, 3600 U.S. Courthouse, 333 West 4th, Tulsa, OK 74103.

KEN RAY UNDERWOOD

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 18 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

RUSSELL L. GRAHAM,

Plaintiff,

vs.

DALE A. WILSON and
AUTO CONVOY COMPANY,

Defendants.

No. 85-C-954-B

O R D E R

This matter comes before the Court on the motion to remand of plaintiff Russell L. Graham. Defendants removed this action from the District Court of Wagoner County, Oklahoma. Because Wagoner County, Oklahoma is located within the geographic district of the United States District Court for the Eastern District of Oklahoma, the matter is hereby transferred to that court. Sinclair v. Kleindienst, 711 F.2d 291, 294 (D.C. Cir. 1983).

IT IS SO ORDERED this 18th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

9

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

DAVID H. SANDERS, Plaintiff, vs. THE FLINTKOTE COMPANY, a Delaware corporation, using the trade name and doing business as Genstar Building Materials Company, and Genstar Building Materials Company, a Delaware corporation, Defendants and Third-Party Plaintiffs, POLYMER BUILDING SYSTEMS, INC., a California corporation, Defendant, THOMAS CONCRETE PRODUCTS CO., an Oklahoma corportion, Third-Party Defendant.	)	No. 84-C-665-B

STIPULATION OF DISMISSAL

COME NOW David H. Sanders, Plaintiff, The Flintkote Company and Genstar Building Materials Company, Defendants and Third-Party Plaintiffs, Polymer Building Systems, Defendant, and Thomas Concrete Products Co., Third-Party Defendant, and hereby dismiss all claims and cross-claims

with prejudice, for the reason that all claims have been settled and compromised among the parties.

Respectfully submitted,

FELDMAN, HALL, FRANDEN, WOODARD & FARRIS

By: _____
WM. S. HALL
816 Enterprise Building
Tulsa, Oklahoma 74103
(918) 582-7129
Attornyes for David H. Sanders

RHODES, HIERONYMUS, JONES, TUCKER & GABLE

By: _____
WILLIAM B. SELMAN
2800 Fourth National Bank Building
Tulsa, Oklahoma 74119
(918) 582-1173
Attorneys for The Flintkote Company
d/b/a Genstar Building Materials Company

McGIVERN, SCOTT, GILLARD & McGIVERN

By: _____
EUGENE ROBINSON
1515 South Boulder
Tulsa, Oklahoma 74119
(918) 584-3391
Attorneys for Polymer Building Systems, Inc.

BEST, SHARP, THOMAS, GLASS & ATKINSON

By: _____
PAUL T. BOUDREAUX
507 South Main Street
300 Oil Capital Building
Tulsa, Oklahoma 74103
(918) 582-8877
Attorneys for Thomas Concrete Products Co.

CERTIFICATE OF MAILING

I, William S. Hall, do hereby certify that true and correct copies of the foregoing Stipulation of Dismissal was mailed to the following attorneys of record on this 18 day of ~~January~~ February, 1986, with sufficient postage fully prepaid thereon as follows:

William B. Selman, Esq.
2800 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119

Eugene Robinson, Esq.
1515 South Boulder
Tulsa, Oklahoma 74119

Paul T. Boudreaux, Esq.
507 South Main Street
300 Oil Capital Building
Tulsa, Oklahoma 74103

WM. S. HALL

IN THE UNITED STATES DISTRICT COURT WITHIN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

GRANT FREDERICK GONYER, JR., Plaintiff,	)	
HOME INDEMNITY COMPANY, Intervenor,	)	
vs.	)	NO. 83-C-325-E
GEORGIA-PACIFIC CORPORATION, Defendant and Third Party Plaintiff,	)	
vs.	)	
BLACK-CLAWSON COMPANY, INC., DILTS MACHINE WORKS DIVISION, Third Party Defendant.	)	

ORDER OF DISMISSAL

Upon good cause shown, and it appearing that the plaintiffs Grant Frederick Gonyer, Jr. and Home Indemnity Company have entered into a settlement in good faith with Georgia-Pacific Corporation, the action of the above-mentioned plaintiffs insofar as it relates to defendant Georgia-Pacific Corporation is hereby dismissed with prejudice.

It also appearing that Georgia-Pacific Corporation has entered into a settlement as to the claims of the plaintiff and wishes to dismiss its third party complaint against Black-Clawson Company, Inc. without prejudice, it is hereby ORDERED that the

third party complaint of Georgia-Pacific Corporation against Black-Clawson Company, Inc. is hereby dismissed without prejudice.

Dated this 18th day of February, 1986.

S/ JAMES O. ELLISON

JUDGE OF THE DISTRICT COURT

United States District Court

FOR THE
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

CIVIL ACTION FILE NO. 81-2184

UNITED STATES OF AMERICA

vs.

WILLIAM R. DOUGLAS

M-1262-CV

JUDGMENT

FILED
FEB 14 1986
Jack C. Silver, Clerk
U. S. DISTRICT COURT

CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

I, Beverly R. Stites, Clerk of the United States District Court for the Western District of Arkansas, do hereby certify the annexed to be a true and correct copy of the original judgment entered in the above entitled action on October 9, 1981, as it appears of record in my office, and that no notice of appeal from the said judgment has been filed * in my office and the time for appeal commenced to run on October 9, 1981, upon entry of the judgment

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of the said Court this 28th day of January, 19 86

BEVERLY R. STITES, Clerk

By _____ Deputy Clerk

* When no notice of appeal from the judgment has been filed, insert "no notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run on [*insert date*] upon the entry of [If no motion of the character described in Rule 73(a) F.R.C.P. was filed, here insert 'the judgment', otherwise describe the nature of the order from the entry of which time for appeal is computed under that rule.] If an appeal was taken, insert "a notice of appeal from the said judgment was filed in my office on [*insert date*] and the judgment was affirmed by mandate of the Court of Appeals issued [*insert date*]" or "a notice of appeal from the said judgment was filed in my office on [*insert date*] and the appeal was dismissed by the [insert 'Court of Appeals' or 'District Court'] on [*insert date*]", as the case may be.

FPI—LK—4-17-67—15M—7585

of interest from this date forward.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

UNITED STATES OF AMERICA, Plaintiff,)
v.) Civil No. 81-2184
WILLIAM R. DOUGLAS, Defendant.)

JUDGMENT

On this 9th day of October, 1981, this case comes on to be heard on the Complaint of the plaintiff, plaintiff's Affidavit of Default, and other matters and things, from which the Court finds:

1. That the Court has jurisdiction of the parties and subject matter.

2. That the defendant has been duly served with summons as required by law and that the defendant has failed to appear and defend within the 20 day time period as prescribed by law.

3. That pursuant to the provisions of 38 U.S.C. §1681, 1682, as amended, the Veterans Administration paid defendant an educational assistance allowance as shown on the attached Certificate of Indebtedness marked Exhibit "A", and based upon defendant's statement that he would be enrolled in a course of higher education.

4. Defendant is indebted to plaintiff in the principal amount of $633.73 as shown on the account attached hereto and annexed as Exhibit "A".

5. Plaintiff is entitled to recover of and from said defendant the sum of $633.73, plus interest from date of judgment at the rate provided by law.

6. That the defendant is liable to the plaintiff, United States of America, in the sum of $633.73, plus the legal rate of interest from this date forward.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that the plaintiff, United States of America, recover and have judgment against the defendant, William R. Douglas, in the sum of $633.73, plus interest at the legal rate from this date forward.

I hereby certify that the foregoing is a true copy of the original on file in this Court.
BEVERLY R. STITES, Clerk
By Deputy Clerk

Approved
U. S. District Court
Western Dist. Arkansas
FILED
OCT 9 1981
Pat L. Graham, Jr., Clerk
By Deputy Clerk

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROGER BLAIR, as father and legal guardian of Cathleen Blair, a minor child, and ROGER BLAIR, individually,

Plaintiff,

vs.

COSCO/PETERSON, a subsidiary of Kidde, Inc., COSCO, INC., KIDDE, INC., foreign corporations, WILGAR, INC., an Indiana corporation, MODERN MERCHANDISING, INC., d/b/a LaBELLE'S a Minnesota corporation, and BEST PRODUCTS COMPANY, INC., d/b/a Best/ LaBELLE'S, a Virginia corporation,

Defendant.

Cause No. 84-C-788-E

JUDGMENT

Now on this 11th day of February, 1986, this cause comes on regularly to be heard as ordered pursuant to application of the parties for approval of this Court regarding settlement of the plaintiffs' claims against defendants Cosco, Inc., Wilgar, Inc., Kidde, Inc., and Best Products Company, Inc. The plaintiff Roger Blair appears personally on his own behalf and in his capacity as the father and legal guardian of Cathleen Blair, a minor child. Plaintiffs being represented by Michael P. Atkinson, Esq., their attorney of record. The defendants Cosco, Inc., Wilgar, Inc., Kidde, Inc., and Best Products Company, Inc., appearing by and through Alfred K. Morlan, Esq. The Court having been advised by the parties regarding their agreement to settle the plaintiffs' claims against the above described defendants and having heard all the evidence and being fully advised, finds that judgment should be entered for Roger Blair individually and as father and legal guardian of Cathleen Blair, a minor child, in the total sum of Two Million Five Hundred Thousand and no/100 Dollars ($2,500,000.00).

The Court futher finds that Roger Blair individually and as father and guardian of Cathleen Blair has incurred reasonable and necessary expenses in the sum of Seventy-Five Thousand Four Hundred Sixty-seven and 96/100 Dollars ($75,467.96) and a reasonable and necessary attorney fee in the sum of One Million Ninety-one Thousand Thirty-nine and 42/100 Dollars ($1,091,039.62) and that such sums should be paid from the sum received by Roger Blair individually and as father and guardian of Cathleen Blair, a minor child, to Best, Sharp, Thomas, Glass & Atkinson, attorneys for plaintiffs.

The Court further finds that the net sum received by the plaintiffs should be allocated to Roger Blair individually in the amount of Two Hundred Thousand Twenty-three and 89/100 Dollars ($200,023.89) and to Roger Blair as father and legal guardian of Cathleen Blair, a minor child, the the amount of One Million One Hundred Thirty-three Thousand Four Hundred Sixty-eight and 63/100 Dollars ($1,133,468.63) and that said sum shall be deposited in interest bearing accounts or certificates of deposit in at least two federally insured banks or savings and loan institutions until further order of this Court.

The Court further finds that the parties hereto desire to keep the terms and conditions including the amount paid by the defendants to the plaintiffs confidential and finds that it is in the best interest of the parties that said information be placed under seal by the Clerk of the Court and that the parties to this cause and the counsel be ordered to refrain and desist from disclosing to any person, firm or corporation either directly or indirectly the terms and conditions of the settlement between the parties to this cause the judgment entered by this Court but counsel for the parties shall be free to represent any other claimant or defendant with regard to claims arrising out of the use of similar or identical child restraint systems.

The Court further finds that there is presently pending before this Court a cause entitled Roger Blair, as father and legal guardian of Cathleen Blair, a minor child, v. Insurance Company of North America, 85-C-483-E, wherein the plaintiff seeks a declaratory judgment that the defendant does not have a valid subrogation claim to Two Hundred Thousand and no/100 Dollars ($200,000.00) to the sum paid by the defendants in this cause to the plaintiffs and further finds that the sum of Two Hundred Thousand and no/100 Dollars ($200,000.00) should be placed by plaintiffs in an interest bearing escrow account maintained by the firm of Best, Sharp, Thomas, Glass & Atkinson, until further order of this Court.

The Court further finds that the costs incurred by the parties shall be borne by the party who or which incurred said costs and shall not be taxed to the defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that judgment is rendered for Roger Blair individually and as father and legal guardian of Cathleen Blair, a minor child, in the amount of Two Million Five Hundred Thousand and no/100 Dollars ($2,500,000.00).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that Roger Blair individually and as father and guardian of Cathleen Blair has incurred reasonable and necessary expenses in the sum of Seventy Five Thousand Four Hundred Sixty-seven and 96/100 Dollars ($75,467.96) and a reasonable and necessary attorney fee in the sum of One Million Ninety-one Thousand Thirty-nine and 42/100 Dollars ($1,091,039.62) and that such sums should be paid by Roger Blair individually and as father and guardian of Cathleen Blair, a minor child, to the firm of Best, Sharp, Thomas Glass & Atkinson, attorney for plaintiffs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the net sum received by

the plaintiffs should be allocated to Roger Blair individually in the amount of Two Hundred Thousand Twenty-three and 89/100 Dollars ($200,023.89) and to Roger Blair as father and legal guardian of Cathleen Blair, a minor child, that the amount of One Million One Hundred Thirty-three Thousand Four Hundred Sixty-eight and 73/100 Dollars Dollars ($1,133,468.73) and that said sum shall be deposited in interest bearing accounts or certificates of deposit in at least two federally insured banks or savings and loan institutions until further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the sum of Two Hundred Thousand and no/100 Dollars ($200,000.00) should be placed by Plaintiffs in an interest bearing escrow account maintained by the firm of Best, Sharp, Thomas, Glass & Atkinson, until final adjudication of the issues raised in cause number 85-C-483-E and further order of this Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the parties hereto desire to keep the terms and conditions including the amount paid by the defendants to the plaintiffs confidential and finds that it is in the best interest of the parties that said information be placed under seal by the Clerk of the Court and that the parties to this cause and the counsel be ordered to refrain and desist from disclosing to any person, firm or corporation either directly or indirectly the terms and conditions of the settlement between the parties to this cause the judgment entered by this Court but counsel for the parties shall be free to represent any other

claimant or defendant with regard to claims arrising out of the use of similar or identical child restraint systems.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the costs and expenses incurred by the parties shall be borne by the party incurring said cost or expense.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Micharel P. Atkinson
Attorney for Plaintiffs

Alfred K. Morlan
Attorney for Defendants

1524004005-17

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLES BICE and EARLENE BICE,	)	
Plaintiffs,	)	
FIREMAN'S FUND INSURANCE COMPANY,	)	No. 84-C-824-E
Intervenor,	)	
vs.	)	
RYDER TRUCK RENTAL, INC.,	)	
Defendant.	)	

ORDER OF DISMISSAL

This matter came on for consideration on this 14 day of February, 1986 upon the Joint Application For Dismissal With Prejudice filed herein of the intervenor Fireman's Fund Insurance Company and the defendant Ryder Truck Rental, Inc. The Court being duly advised in the premises, finds that said Application For Dismissal is in the best interests of justice and should be approved, and the above styled and numbered cause of action of Fireman's Fund Insurance Company dismissed with prejudice to a refiling.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Joint Application For Dismissal With Prejudice by Fireman's Fund Insurance Company and Ryder Truck Rental, Inc., be and the same is hereby approved and the above styled and numbered

cause of action of said intervenor is dismissed with prejudice to a refiling.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

O.K.:

Eugene Robinson
Attorney for intervenor
Fireman's Fund Insurance
Company

Donald Church
Attorney for defendant
Ryder Truck Rental, Inc.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

DONALD C. BIERBAUM,
Plaintiff,

VS.

JACK-PENN FUSSELMAN, and HALE-HALSELL COMPANY, an Oklahoma Corporation,
Defendants.

NO. 84-C-321-E

O R D E R

Now on this 14th day of February, 1986, for good cause shown, upon the application of the parties to dismiss with prejudice, same is granted.

IT IS SO ORDERED.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JIMMY JOE HARTSELL,

Plaintiff,

vs.

JAMES M. INHOFE, et al.,

Defendants.

No. 84-C-274-E

JUDGMENT

This action came on for hearing before the Court, the Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and decisions having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Defendants, James M. Inhofe, Roy Gardner, John Doe, and the City of Tulsa, Oklahoma recover judgment of the Plaintiff, Jimmy Joe Hartsell on Plaintiff's complaint.

IT IS FURTHER ORDERED that Defendants James M. Inhofe, Roy Gardner and the City of Tulsa, Oklahoma, are awarded the costs of the action.

DATED this 13th day of February, 1986.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

27

C-22
5/84

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 14 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

Iva Lorene Lowe and Charles Dwayne Lowe

Plaintiff(s),

vs.

Fibreboard Corporation, et al.

Defendant(s).

No. 84-C-13-C

ADMINISTRATIVE CLOSING ORDER

Johns-Manville Sales; Forty-Eight Insulation, Ryder Ind., & Unarco Industr

The defendants having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 90 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 13th day of February, 1986.

UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 14 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

PAUL WM. POLIN & MARSHA POLIN,

Plaintiffs,

vs.

JEWS FOR JESUS, a/k/a HINENI MINISTRIES, MOISHE ROSEN, SUSAN PERLMAN, DONNA HULL, LUCY WARD, GEORGE PECKNICK, JUDY PECKNICK, DORE SCHUPACK, PHYLISS HEWITT, CHARLES L. PACK, and CECIL ROSEN,

Defendants.

No. 85-C-424-B

ORDER

This matter comes before the Court on plaintiffs' application to amend their pleadings and for leave to file a second amended complaint. The Court dismissed this matter on October 7, 1985, and denied plaintiffs' "motion to reconsider court order of dismissal and motion to dismiss non-diverse parties" on January 17, 1986. The application to amend now before the court is essentially duplicative of the motion to reconsider, in which plaintiffs sought the amendment of their Amended Complaint. The Court declined to allow plaintiffs to amend in the January 17, 1986 Order, holding that plaintiffs were barred by their bad faith failure to cure the patent defects in their original complaint after having been given leave to amend, Foman v. Davis, 371 U.S. 178, 182 (1962), and finding that plaintiffs' failure to drop the nondiverse defendants after having been given the opportunity to do so caused the Court and defendants needless time and expense.

Plaintiffs' application to amend is denied.

IT IS SO ORDERED this 14th day of February, 1986.

Thomas R. Brett

THOMAS R. BRETT, U.S. DISTRICT JUDGE

09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKALHOMA

AIR ROTARY DRILLING CORP., an Oklahoma corporation,	)	
Plaintiff,	)	
vs.	)	No. 84-C-892-C
CENTAUR INSURANCE COMPANY, a foreign insurance corporation,	)	
Defendant.	)	

ORDER OF DISMISSAL

On this 13 day of Feb, 1986, upon written application of the parties for an order of dismissal with prejudice of the complaint and all causes of action, the Court having examined said application finds that said parties have entered into a compromise settlement covering all claims involved in the complaint and have requested the Court to dismiss the complaint with prejudice to any future action, and the Court having being fully advised in the premises, finds that said complaint should be dismissed. It is, therefore,

ORDERED, ADJUDGED and DECREED by the Court that the complaint and all causes of action of the Plaintiff filed herein against the Defendant be and the same are hereby dismissed with prejudice to any further action.

(Signed) H. Dale Cook

H. DALE COOK, JUDGE
UNITED STATES DISTRICT COURT

C-22
5/84

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Iva Lorene Lowe and Charles Dwayne Lowe

Plaintiff(s),

vs.

Fibreboard Corporation, et al.

Defendant(s).

No. 84-C-13-C ✓

ADMINISTRATIVE CLOSING ORDER

Johns-Manville Sales; Forty-Eight Insulation, Ryder Ind.,& Unarco Industri

The defendants having filed its petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 90 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 13th day of February, 1986.

UNITED STATES DISTRICT JUDGE

96

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LEONARD AND SNIDER, a partnership composed of LARRY D. LEONARD & JERRY M. SNIDER,	)	
Plaintiffs,	)	
vs.	)	
K. WAYNE BUCHNER & SARA JANE BUCHNER, husband and wife; and RIVERSIDE OIL AND REFINING COMPANY, INC., a Louisiana corporation,	)	
Defendants.	)	No. 85-C-803-B

JOURNAL ENTRY OF JUDGMENT

This matter comes on for hearing this 7th day of February, 1985, at 11:00 a.m. pursuant to plaintiff's request for a pre-judgment order of delivery. Plaintiff appears in person and through its attorneys of record, Leonard, Snider and Page, by Jerry M. Snider, and the defendants, K. Wayne Buchner and Sara Jane Buchner, appear personally, and the defendant, Riverside Oil and Refining Company, Inc., appears through its duly authorized representatives, K. Wayne Buchner and Sara Jane Buchner. The hearing proceeded and the plaintiff made an opening statement and presented sworn testimony of witnesses in open Court; the defendants pro se presented opening remarks and their testimony in open Court and rested. Thereafter the defendants, K. Wayne Buchner and Riverside Oil and Refining Company, Inc., confessed judgment against them for the amount sued for in the complaint and stipulated that said sum is due and owing. After hearing

statements of the defendants and being well and truly advised in the premises, the Court finds; and,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiffs be and hereby are granted judgment against the defendants, K. Wayne Buchner, and Riverside Oil and Refining Company, Inc., and each of them, jointly and severally, in the amount of $26,572.76 plus post-judgment interest of 7.85 per cent per annum from February 7, 1985, for the costs of this action accrued and accruing and for a reasonable attorney's fee in the sum of $1,500.00.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
GARY G. TOMLINSON,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 85-C-77-C

STIPULATION OF DISMISSAL

COME NOW the Plaintiff, United States of America, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, Gary G. Tomlinson, by their respective counsel, and hereby stipulate and agree that this matter is dismissed with prejudice pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney

Jack M. Short

JACK M. SHORT
Attorney for Defendant
Gary G. Tomlinson

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 13 1986

Jack C. Silver, Clerk
U.S. DISTRICT COURT

HOWARD FRANKLIN MORRIS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	85-C-791-B
ARCO OIL & GAS COMPANY, a Delaware Corporation,	)	
	)	
Defendant.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

Come Now Plaintiff and Defendant and, pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), hereby stipulate that this matter is dismissed, with prejudice. That parties agree that each is to bear his or its own costs of action, including attorney fees.

HATFIELD, LANDMAN and PAPPAS, P.A.

Georgina B. Landman
1921 South Boston Avenue
Tulsa, Oklahoma 74119
(918) 585-2451

For Plaintiff,
Howard Franklin Morris

NICHOLS, WOLFE, STAMPER, NALLY & FALLIS, INC.

Thomas D. Robertson
Old City Hall Building
Suite 400
124 East Fourth Street
Tulsa, Oklahoma 74103
(918) 584-5182

For Defendant,
ARCO OIL & GAS COMPANY

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 13 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

LOUIS PORTER,

Plaintiff,

v.

SAM BELZBERG and LESMUR HOLDINGS, LTD., a Canadian corporation,

Defendants and Third-Party Plaintiffs,

v.

JOE CAPOZZI, an individual; CLARENCE R. WRIGHT, an individual; THE YUKON NATIONAL BANK, a national banking association; ATOKA CONSULTANTS, INC., a/k/a ATOKA CONSULTING COMPANY, INC., an Oklahoma corporation; RAYMOND WRIGHT, an individual; C. R. WRIGHT ASSOCIATES MANAGEMENT, INC., an Oklahoma corporation; CO-RAN INVESTMENTS, INC., an Oklahoma corporation; JAN L. MILLER, an individual; JACK W. SMITH, an individual; S.P. ENERGY COMPANY, an Oklahoma corporation; and RESOURCES DIVERSIFIED, INC., an Oklahoma corporation,

Third-Party Defendants.

No. 82-C-742-B

AMENDED JUDGMENT

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered as follows in favor of Lesmur Holdings, Ltd., a Canadian corporation, and against the defendants, Clarence R. Wright, Yukon National Bank, Atoka Consultants, Inc., C. R. Wright Associates Management, Inc., Co-Ran

Investments Company, Inc., S. P. Energy Company and Resources Diversified, Inc.:

(A) In the sum of $224,060.00, plus 6% per annum interest from August 7, 1981 until this date;

(B) In the sum of $37,883.66;

(C) Lesmur and SCN, SCN as successor in interest to the Can-Leasing joint venture, are hereby entitled to be and are indemnified by said defendants against all claims, costs, expenses, and/or judgments relative to lease acquisition costs, charges, or expenses made by Debbi Fleming, Jack W. Smith, or Ralph Curton, Jr.

(D) Punitive damages in the amount of $100,000.00 against the said defendants;

(E) Post-judgment interest from this date on the monetary awards herein at the rate of 7.70% per annum;

(F) The costs of this action.

IT IS FURTHER ADJUDGED the defendants, Joe Capozzi, Jack W. Smith, Jan Miller and Raymond Wright are hereby granted judgment against the defendant Lesmur Holdings, Ltd., plus their costs herein.

IT IS FURTHER ADJUDGED all parties herein are to pay their own respective attorneys fees.

DATED this 13th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 13 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

LOUIS PORTER, Plaintiff,	)	
v.	)	NO. 82-C-742-B
SAM BELZBERG and LESMUR HOLDINGS, LTD., a Canadian corporation, Defendants and Third Party Plaintiffs,	)	
v.	)	
JOE CAPOZZI, an individual, et al., Third Party Defendants.	)	

ORDER

The Court has for decision the Motions of Lesmur Holdings, Ltd., to Alter or Amend Judgment, Findings of Fact and Conclusions of Law, To Fix Supersedeas Bond, and additionally To Require an Undertaking with Surety. The third party defendants, Clarence Wright, Yukon National Bank, Atoka Consultants, Inc., C. R. Wright Associates and Co-Ran Investments Company, Inc., apply to stay enforcement of the Court's Judgment pending appeal and to fix a supersedeas bond.

Relative to Lesmur's proposed alteration and/or amemdments to the Court's Findings of Fact and Conclusions of Law, the Court has reviewed same and declines to grant Lesmur's application in this regard because the Court determines its original Findings of Fact and Conclusions of Law are correct and supported by the evidence and applicable law, except in one area. Upon reflection

and review, the Court concludes its award of punitive damages in the sum of $50,000.00 is low and insufficient under the facts and circumstances herein. The Court's Findings of Fact and Conclusions of Law and Judgment is therefore amended to award judgment for punitive damages in favor of Lesmur and against the defendants Clarence R. Wright, Yukon National Bank, Atoka Consultants, Inc., C. R. Wright Associates Management, Inc., Co-Ran Investments, Inc., S. P. Energy Company and Resources Diversified, Inc., in the total sum of One Hundred Thousand ($100,000.00) Dollars. An Amended Judgment is filed contemporaneous herewith to reflect the punitive damage award amendment.

Concerning the attorney's fee award requested by Lesmur, the case of Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975), is the latest authority providing guidance in this regard. The recognized "American Rule" is that attorney's fees are not to be awarded the prevailing party unless provided by statute or agreement of the parties contractually. Neither are present in this case. Lesmur seeks an award of attorney's fees on the basis of an equitable exception to the "American Rule", or in conjunction with and a part of the award of punitive damages.

The Court's jurisdiction in this case is founded on diversity of citizenship, so whether or not Lesmur is entitled to an attorney's fee award is to be governed by Oklahoma law. Bickford v. John E. Mitchell Company, 595 F.2d 540 (10th Cir. 1979).

The concept of the "American Rule" is that a prevailing party's right to its expenses for attorney's fees did not exist at common law and, therefore, any such award must be based upon either statute or contractual agreement of the parties. National Educators Life Ins. Co. v. Apache Lanes, Inc., 555 P.2d 600 (Okla. 1976), and Goodman v. Norman Bank of Commerce, 565 P.2d 372 (Okla. 1977).

There are three rather narrow established exceptions to the "American Rule" which arise out of equity where a prevailing party is awarded attorney's fees in the absence of statute or contract. Lesmur, the movant herein, acknowledges in its brief at page 7 that it does not come within any of the three recognized exceptions to the "American Rule." Oklahoma cases falling within the exceptions to the "American Rule" are City National Bank & Trust Co. v. Owens, 565 P.2d 4 (1977), and Christian v. Amer. Home Assur. Co., 577 P.2d 899 (1978).

The case of Cox v. Theus, 569 P.2d 447 (Okla. 1977), prevents an award of attorney's fees as a part of the punitive damage award. Punitive damages are a tool to deter a wrongdoer for society's benefit and not for the benefit of a party in awarding expenses or attorney's fees. Amoco Pipeline Company v. Montgomery, 487 F.Supp. 1268 (W.D.Okla. 1980); Slocum v. Phillips Petroleum Co., 678 P.2d 716 (Okla. 1983); and Royal Business Machines, Inc. v. Loraine Corp., 633 F.2d 34 (7th Cir. 1980).

Although what appears right and equitable herein strongly dictates Lesmur's attorney's fee request be granted, but there is

no existing legal authority to support such an award in this case.[1] Lesmur's request for attorney's fee is, therefore, denied.

Each party has requested the Court to set a supersedeas bond to stay enforcement of the judgment of the Court pending appeal. The Court concludes the third party defendant judgment debtors, Clarence R. Wright, The Yukon National Bank, Atoka Consultants, Inc., C. R. Wright Associates Management, Inc., Co-Ran Investments, Inc., S. P. Energy Company, and Resources Diversified, Inc., should file a supersedeas bond with this court within twenty (20) days from this date in the amount of Five Hundred Fifty Thousand Dollars ($550,000.00) cash or approved surety. A separate order in this respect is filed herewith.

The Court declines Lesmur's motion for the third party defendant judgment debtors to be required to post an undertaking regarding the indemnity aspect of the Court's judgment relative to the claims of Smith, Curton and Fleming as set forth in the Court's Findings of Fact and Conclusions of Law.

---

1 When, as herein, fraudulent conduct permeated the joint venture relationship throughout, it is only fair and right to require the third party judgment debtor defendants to pay the attorney's fees and expenses incurred by the judgment creditor Lesmur in vindicating its rights and pursuing its just claim. The judgment awarded Lesmur herein is not centered in a simple breach of the joint venture agreement, but in the judgment debtor's abject fraud as is reflected in the Court's Findings of Fact. However, the Alyeska case makes it clear Oklahoma state law applies in this diversity case, and the Court finds no Oklahoma authority permitting an award of Lesmur's requested attorney's fees. Therefore, any change in the law in this regard rests with the legislative branch, not the judicial.

IT IS THEREFORE ORDERED, the Lesmur Holdings, Ltd.'s Motion to Alter or Amend Judgment, Findings of Fact and Conclusions of Law is overruled with the exception that Conclusion of Law No. 8 on page 23 of the Findings of Fact and Conclusions of Law filed herein on July 3, 1985, is amended to increase the amount of the punitive damage award from $50,000.00 to $100,000.00, and an amended judgment is filed herewith; defendant's motion to require undertaking is overruled, and the judgment creditor defendants Clarence Wright, Yukon National Bank, Atoka Consultants, Inc., C. R. Wright Associates and Co-Ran Investments Company, Inc., are required to post a cash or approved corporate surety bond as directed by the separate order filed this date.

DATED this 13th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
KENNARD C. TERRY,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 85-C-994-E

ORDER OF DISMISSAL

Now on this 12th day of February, 1986, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Kennard C. Terry have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Kennard C. Terry, be and is dismissed without prejudice.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
TULSA DIVISION

ANDREW R. ZINSMEYER, as Trustee for and on behalf of the J.W. Zinsmeyer "A" Trust and J.W. Zinsmeyer "B" Trust; MARY JEAN ZINSMEYER, Individually and as Custodian for ANDREA J. ZINSMEYER, DANIEL M. ZINSMEYER, AMY S. ZINSMEYER, and JONATHAN R. ZINSMEYER,	§	
Plaintiffs,	§	CIVIL ACTION NO.
VS.	§	85-C-182-E
VAN DYKE PRECIOUS METALS, INC., an Illinois corporation, DALE McCULLOUGH, Trustee for FREESTONE RESOURCES, INC., a Texas corporation, RIATA OIL & GAS CO., INC., a Texas corporation, and DAVID M. KING,	§	
Defendants.	§	

AGREED ORDER

On the 12th day of February, 1986, came on for consideration, the Motion to Transfer of Dale McCullough, Trustee for Freestone Resources, Inc., at which time all the parties by and through their counsel of record announced to the Court that an agreement had been reached that the Motion to Transfer Venue was well taken and should be granted. Accordingly,

IT IS ORDERED, ADJUDGED AND DECREED that the above-entitled and numbered cause be transferred from this District to the United States District Court for the Northern District of Texas, Dallas Division. The clerk of the United States District Court for the Northern District of Oklahoma, Tulsa Division, is hereby ordered to effect such a transfer immediately.

SIGNED this _____ day of _____, 1986.

_____
JUDGE PRESIDING

AGREED TO:

SHORT, HARRIS, TURN & DANIEL

By: _____
Sam P. Daniel, III

COUNSEL FOR PLAINTIFF

WINSTEAD, McGUIRE, SECHREST
& MINICK

By: _____
Michael J. Quilling

COUNSEL FOR TRUSTEE

ATTORNEY AT LAW

By: _____
Steven A. Heath

COUNSEL FOR DEFENDANT,
VAN DYKE PRECIOUS METALS, INC.

FEB 10 1983

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAY L. SHIELDS and JEAN SHIELDS, Plaintiffs v. UNITED STATES OF AMERICA, Defendant.	)	CIVIL NO. 83-C-623-C

STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED and agreed that the complaint in the above-entitled case, filed against plaintiffs be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of litigation.

PAUL R. HODGSON
4111 So. Darlington No. 600
Tulsa, Oklahoma 74135

R. S. PASSO
906 South Cheyenne
Tulsa, Oklahoma 74119

Attorneys for Plaintiffs

MICHAEL M. GIBSON
Attorney, Tax Division
Department of Justice
Dallas, Texas 75242

Attorney for Defendant

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
PAWNEE LIVESTOCK SALES, INC., and NEWKIRK SALES BARN,	)	
	)	
Defendants.	)	CIVIL ACTION NO. 86-C-35-C

NOTICE OF DISMISSAL

COMES NOW the Plaintiff, United States of America, by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, and hereby dismisses its Complaint against the Defendant, Pawnee Livestock Sales, Inc., pursuant to Rule 41 of the Federal Rules of Civil Procedure.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

Nancy Nesbitt Blevins

NANCY NESBITT BLEVINS
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 13th day of February, 1986, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to:

E. Lawrence Oldfield, Esq.
Suite 1000
200 Madison Plaza
Chicago, Illinois 60606

C. D. Northcutt, Esq.
P.O. Drawer 1669
Ponca City, Oklahoma 74602

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JIMMY JOE HARTSELL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 84-C-274-E
	)	
JAMES M. INHOFE, et al.,	)	
	)	
Defendants.	)	

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The Defendants, James M. Inhofe, Roy Gardner and the City of Tulsa have moved the Court, pursuant to Rule 56 of the Federal Rules of Civil Procedure, to enter summary judgment in their favor for the reason that the Plaintiff, Jimmy Joe Hartsell, has failed to state a claim under 42 U.S.C. § 1983 against them upon which relief can be granted.

The evidentiary materials attached to the Defendants' Motion for Summary Judgment reveal the following facts:

1. The Plaintiff, Jimmy Joe Hartsell was given a traffic citation in the City of Tulsa, Oklahoma for speeding in a school zone on January 22, 1982.
2. The citation required Mr. Hartsell to appear in Traffic Court on February 8, 1982.
3. Prior to this date, Paul McBride, acting as attorney for Mr. Hartsell, appeared before Judge Richard Reeh, a judge of the Tulsa Municipal Criminal Court. Judge Reeh imposed a fine upon Mr. Hartsell, but no record of Judge Reeh's disposition of the case was entered into the

records of the Municipal Court. Mr. McBride had the responsibility of communicating the disposition to the Judge's minute clerk.

4. When Mr. Hartsell failed to appear before the judge at the docket call on February 8, 1982, the judge issued a bench warrant for his arrest.

By Answer, the Defendants have also admitted the following:

1. Mr. Hartsell paid his fine of $125.00, plus $5.00 in court costs on February 4, 1982.
2. The deputy court clerk who received the payment, contrary to official policy, neglected to post the payment on Plaintiff's court record.
3. The judge who presided at the traffic docket on February 8, 1982 was not Judge Reeh.
4. Mr. Hartsell was arrested on April 24, 1983 and detained for two hours pursuant to the bench warrant issued in connection with the events described above.

Rule 56(e) provides, in pertinent part, as follows:

> ... When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Here, the Plaintiff has not controverted any of the facts set forth above in his Response to Defendants' Motion for Summary Judgment. Neither has Plaintiff supplemented his Response with

additional evidence. At most, Plaintiff's position is that "there were holes and gaps in the City's system whereby people could come in and pay their ticket but not have the receipt posted to their case." Plaintiff also argues that "this hole or gap was purposely, knowingly and intentionally designed into the system by [the Court Administrator] under his authority from Defendants Roy Gardner and Mayor Inhofe." The only evidence which Plaintiff advances in support of this claim is excerpts from the deposition of the Court Administrator, Terry Simonson, in which Mr. Simonson states that there was no standard procedure to check after the issuance of a bench warrant to see if the fine had been paid. Mr. Simonson also testified that it was "highly irregular" for anyone to pay his fine prior to the first appearance before the Municipal Judge, so that there would be no reason for the Clerk's office to check for payment. Clearly such evidence is insufficient to demonstrate that Mr. Simonson knowingly and intentionally designed holes or gaps in the handling of municipal traffic offenses such as would deprive a person of due process of law.

In Daniels v. Williams, 54 U.S.L.W. 4090 (January 21, 1986) and Davidson v. Cannon, 54 U.S.L.W. 4095 (January 21, 1986) the United States Supreme Court held that the Due Process Clause is not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty or property. Here, it is undisputed that Mr. Hartsell's arrest was caused by the failure of either the Judge, the Judge's Minute Clerk, or Mr. Hartsell's attorney to see that a record of Judge Reeh's

disposition of the case was properly made. This error was compounded by the deputy court clerk's failure to note the payment in Mr. Hartsell's file. Neither of these acts was intentional. Neither of these acts were the result of the official policy of the City of Tulsa.

The Due Process Clause has historically been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property - to prevent arbitrary exercise of the powers of the government. The Defendant has advanced no evidence of such an arbitrary exercise of governmental power. Accordingly, the Defendants are entitled to judgment as a matter of law.

DATED this 13th day of February, 1986.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 13 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

EDWARD E. GRUMBEIN and CAROL L. GRUMBEIN, Husband and Wife,

Plaintiffs,

v.

RUSS ROGERS CHEVROLET, INC., a Corporation; CANDACE MASTERS, an Individual; and TOM McHARGUE, an Individual,

Defendants.

No. 85-C-669-B

JUDGMENT

This matter came before the Court on defendant Russ Rogers Chevrolet's Motion for Summary Judgment and the issues having been duly reviewed and the plaintiffs having offered no objections thereto,

It is ORDERED AND ADJUDGED

that the Motion for Summary Judgment is sustained, that the plaintiffs take nothing from defendant Russ Rogers Chevrolet, Inc., that the action against defendant Russ Rogers Chevrolet, Inc., be dismissed on the merits, and that the defendant Russ Rogers Chevrolet, Inc., recover of the plaintiffs, Edward and Carol Grumbein, its costs of action.

DATED this 13th day of February, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 13 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

EDWARD E. GRUMBEIN and CAROL L. GRUMBEIN, Husband and Wife,

Plaintiffs,

v.

RUSS ROGERS CHEVROLET, INC., a Corporation; CANDACE MASTERS, an Individual; and TOM McHARGUE, an Individual,

Defendants.

No. 85-C-669-B

O R D E R

This matter comes before the Court on the motion of defendant Russ Rogers Chevrolet, Inc., for summary judgment. Plaintiffs have responded and state they have no objection to the movant's motion. For the reason set forth below, the Motion for Summary Judgment is sustained.

This is an action under 15 U.S.C.A. §1988 for a claim that defendants provided odometer mileage statements to plaintiffs for an automobile that did not truthfully disclose the actual mileage driven. Defendant Russ Rogers Chevrolet, Inc., ("Rogers"), responded to plaintiffs' Complaint on August 30, 1985, denying plaintiffs' allegations. To sustain their cause of action against Rogers, the plaintiffs must present evidence that the odometer on the subject vehicle was altered, that Rogers knew the odometer reading differed from the actual mileage driven and that Rogers, with intent to defraud, gave plaintiffs a false odometer statement when they purchased the vehicle. Bryant v. Thomas, 461 F.Supp. 613 (D.C. Neb. 1978); Shore v. J.C. Phillips Motor Co., 567 F.2d 1364 (5th Cir. 1978).

After completion of discovery in this matter, plaintiffs state they have no objection to the Court granting summary judgment in favor of Rogers. Therefore, it is hereby ordered that the Motion for Summary Judgment of defendant Rogers is sustained.

IT IS SO ORDERED, this 13th day of February, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

FILED

FEB 12 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

PPG INDUSTRIES, INC., a Pennsylvania corporation,

Plaintiff,

vs.

CONSOLIDATED ALUMINUM CORPORATION, a Delaware corporation,

Defendant.

Case No. 83-C-1024-B

ORDER OF DISMISSAL WITH PREJUDICE

This matter coming on for hearing before the Court on this 12th day of ~~January~~ February, 1986, upon the Application of the plaintiff for Order of Dismissal with Prejudice in this cause, plaintiff appearing by counsel, Richard Carpenter, and the defendant appearing by counsel, Dale F. McDaniel, and the Court being advised in the premises and having examined the Application of the plaintiff herein, finds that all issues of law and fact heretofore existing between the parties have been settled, compromised, released and extinguished, for valuable consideration flowing from plaintiff to defendant and from defendant to plaintiff, and further finds that there remains no issue of law or fact to be determined in this cause. The Court further finds that plaintiff desires to dismiss its cause to future actions for the reasons stated, and that its Application should be granted.

BE IT, THEREFORE, ORDERED, ADJUDGED AND DECREED BY THE COURT, that all issues of law and fact heretofore existing between the plaintiff and defendant have been settled, compromised, released and extinguished for valuable consideration, and that there remains no issue to be determined in this cause between the parties.

BE IT FURTHER ORDERED, ADJUDGED AND DECREED BY THE COURT, that plaintiff's cause and any causes arising therefrom, be in the same are hereby dismissed with prejudice to all future actions thereon.

S/ THOMAS R. BRETT
United States District Judge

APPROVED:

SANDERS & CARPENTER

By Richard Carpenter
Attorneys for Plaintiff

McDANIEL & BEAUCHAMP

By
Attorneys for Defendant

Entered

FILED

FEB 12 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HERBERT E. BOWMAN, SR., and HERBERT E. BOWMAN, JR.,

Plaintiffs,

vs.

CITY OF TULSA, OKLAHOMA, a municipal corporation, and TULSA POLICE OFFICERS, J. D. WOODWARD, LORRAINE AYE and C. D. SMITH,

Defendants.

No. 84-C-1023-B

STIPULATION OF DISMISSAL WITH PREJUDICE AS TO DEFENDANTS J. D. WOODWARD AND LORRAINE AYE

COME NOW the plaintiffs by and through their attorney of record, John Echols, and the defendants J. D. Woodward and Lorraine Aye by and through their attorney of record, Martha Rupp Carter, Assistant City Attorney, and stipulate to the dismissal of the above-captioned action with prejudice insofar as it relates to defendants J. D. Woodward and Lorraine Aye pursuant to Rule 41 (a) (1) (ii) of the Federal Rules of Civil Procedure with prejudice to plaintiffs' right to hereafter reinstate such action as to said defendants, with costs assessed to plaintiffs.

John Echols
Attorney for Plaintiffs
306 Center Office Building
707 South Houston Avenue
P.O. Box 2984
Tulsa, OK 74101

Martha Rupp Carter
Martha Rupp Carter
Attorney for defendants
200 Civic Center, Room 316
Tulsa, OK 74103

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 12 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

GREAT PLAINS ENERGY CORPORATION, Plaintiff,	)	
vs.	)	No. 86-C-42B
CLAUDE L. DAVIS, Defendant.	)	

PERMANENT INJUNCTION AND FINAL JUDGMENT
PURSUANT TO STIPULATION

PLAINTIFF, appearing through it's attorney, Robert A. Flynn, and Defendant Claude L. Davis, appearing through hi attorney, James Sontag, and in appearing to this Court that t parties have stipulated and consented to the Entry of Final Judgment without taking proof and without this Final Judgment, evidence or an admission of defendants regarding any issue or fact alleged in said complaint, and without said defendants admitting any liability herein; and the Court having considered the matter and the pleadings and good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction of the subject matter hereof and the parties heretc;

2. The Injunctive provisions of the Final Judgment are applicable to Defendant Claude L. Davis, his agents, representatives, employees and successors and to all persons, corporations or other entities acting by, through, under or on behalf of said Defendant Claude L. Davis, and to all persons acting in concert with or participating with said Defendant with actual or constructive knowledge of this Final Judgment.

Exhibit 'A'

3. Pursuant to the Assignment of Oil and Gas Lease attached to the original Petition wherein Petrodyne Resources, Inc., signed to Great Plains Energy Corporation it's interest in the following described land in Nowata County, State of Oklahoma:

> W1/2 of SE1/4 of SW1/4 of SW1/4; NE1/4 of SW1/4 of SW1/4; NW1/4 of SE1/4 of SW1/4; SW1/4 of NE1/4 of SW1/4; SW1/4 of SW1/4 of SW1/4; and the east 1/2 of the SE1/4 of SW1/2 of SW1/4, Section 15, Township 25N, Range 16E, containing 50 acres, more or less.

Plaintiff and Defendant agree that said lease is in full force and effect, and Defendant understands that he and any related entity or individual are hereby permanently enjoined and restrained from:

A. Directly or indirectly interferring with the production of oil, gas and mineral interest pursuant to the rights under the lease assigned to Plaintiff;

B. Causing any person or entity to directly or indirectly engage in any practice that would restrain or inhibit production of oil, gas and minerals on the above described property;

C. Stopping the Plaintiff or interferring with the Plaintiff in the building of gates, structures, roads on the property described above;

D. Engaging in any practices or encouraging any other individuals or entities to engage in any practice which might inhibit the Plaintiff from freely producing oil, gas and minerals from the above described property.

4. Jurisdiction is retained for the purpose of enabling any party to this Final Judgment to apply to the Court at any time for said further orders and directions as may be necessary or appropriate for the construction or carrying out of the injunctive provisions of this Permanent Injunction and Final Judgment, or for the modification of any of the injunctive provisions hereof, or the enforcement or compliance therewith, and for the payment of damages for violation hereof. No damages are awarded to either party at this tire.

DATED this 12th day of February, 1986.

S/ THOMAS R. BRETT

Judge

Entered

FILED

FEB 12 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

HERBERT E. BOWMAN, SR., and HERBERT E. BOWMAN, JR.,

Plaintiffs,

vs.

CITY OF TULSA, OKLAHOMA, a municipal corporation, and TULSA POLICE OFFICERS, J. D. WOODWARD, LORRAINE AYE and C. D. SMITH,

Defendants.

No. 84-C-1023-B

CONSENT DECREE

Plaintiffs Herbert E. Bowman, Sr., and Herbert E. Bowman, Jr., filed their complaint herein on December 27, 1984, alleging violation of their civil rights and pendent state law tort claims of false arrest and false imprisonment and seeking compensatory damages, punitive damages, and attorney fees. The plaintiffs, by their attorney of record John Echols, and the defendant, City of Tulsa, a municipal corporation, by its attorney of record Martha Rupp Carter, Assistant City Attorney, have each consented to the making and the entry of this Consent Decree, without trial and without adjudication of any issue of fact or law arising herein, and the court having considered the matter and being duly advised, orders, adjudges and decrees as follows.

1. This court has jurisdiction of the subject matter of this action and the parties hereto. The complaint properly states claims for relief against the consenting defendant under 42 U.S.C. §1983 and the asserted pendent state law tort claims.

2. The defendant shall pay the plaintiffs the sum of $2,000.00 as reasonable damages and the sum of $1,555.65 as costs for deposition transcripts for a total sum of $3,555.65.

3. Plaintiffs shall be responsible for all court costs and attorney fees incurred by plaintiffs as a result of this litigation.

4. This Consent Decree shall not constitute an admission of liability or fault on the part of the consenting defendant.

5. This Consent Decree shall include and cover all issues of fact and law raised by the plaintiff, and shall act as a final judgment as to such issues and with regard to all damages sustained by plaintiff.

DATED this 12th day of ~~October~~ February, 1986

S/ THOMAS R. BRETT

Thomas R. Brett
United States District Judge

We, the undersigned, hereby consent to the entry of the foregoing Consent Decree as a final judgment herein.

John Echols
Attorney for Plaintiffs

Martha Rupp Carter
Martha Rupp Carter
Attorney for named defendants

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ANNIE PERDUE, Administratrix of the Estate of Tommy C. Boswell, and RONALD BARROW, Administratror of the Estate of Lori Coley Barrow,	)	
Plaintiffs,	)	
-vs-	)	No. 85-C-570-E
AIRCRAFT ACCESSORIES OF OKLAHOMA, INC., an Oklahoma corporation,	)	
Defendant.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, Plaintiffs and Defendant hereby stipulate that all claims pending in this action are hereby dismissed, with prejudice to the refiling thereof.

DATED this 11th day of February, 1986.

Michael D. Parks
Michael D. Parks
ATTORNEY FOR PLAINTIFFS

Richard B. Noulles
Richard B. Noulles
ATTORNEY FOR AIRCRAFT ACCESSORIES
OF OKLAHOMA, INC.

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

GLEN LUPHER, SR., Administrator of the Estate of Cathleen Ray Lupher, Plaintiff,	)	
-vs-	)	No. 85-C-585-E
AIRCRAFT ACCESSORIES OF OKLAHOMA, INC., an Oklahoma corporation, Defendant.	)	

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, Plaintiff and Defendant hereby stipulate that all claims pending in this action are hereby dismissed, with prejudice to the refiling thereof.

DATED this 11th day of February, 1986.

Michael D. Parks
Michael D. Parks
ATTORNEY FOR PLAINTIFF

Richard B. Noulles
Richard B. Noulles
ATTORNEY FOR AIRCRAFT ACCESSORIES
OF OKLAHOMA, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHEVRON U.S.A. INC.	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 85-C-715-E
vs.	§	
	§	
K & K EQUIPMENT CO., INC.	§	
	§	
Defendant.	§	

DEFAULT JUDGMENT

In this action, the defendant, K & K Equipment Co., Inc., having been duly served with summons and complaint by certified mail return receipt requested, and having failed to plead or otherwise defend, the legal time for pleading or otherwise defending having expired and the default of said defendant, in the premises having been duly entered according to law; upon the application of plaintiff, Chevron U.S.A. Inc., judgment is hereby entered against said defendant.

WHEREFORE, by virtue of the law and by reasons of the premises aforesaid,

IT IS ORDERED, ADJUDGED AND DECREED, that the said plaintiff does have and recover from defendant, K & K Equipment Co., Inc., the total and true sum of Seven Thousand Nine Hundred Fifty and 00/100 Dollars ($7,950.00) with interest thereon at the legal rate from date of this judgment until paid, together with plaintiff's costs and disbursements incurred in this action, and that plaintiff have execution therefor.

Judgment rendered this 11 day of Feb, 1986.

S/ JAMES O. ELLISON

James O. Ellison
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SAMUEL D. EDWARDS Plaintiff, vs. MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, Defendant.	)	No. 84-C-563-C

JUDGMENT

This action came on before the Court and a jury, Honorable H. Dale Cook, United States District Judge presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

IT IS ORDERED AND ADJUDGED that the plaintiff take nothing, that the action be dismissed on the merits and that the defendant, Missouri-Kansas-Texas Railroad Company recover of the plaintiff, Samuel D. Edwards, its costs of action.

Dated at ~~Muskogee~~ Tulsa, Oklahoma, this 10th day of February, 1986.

H. Dale Cook

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ROOT TRUCKING COMPANY, an Oklahoma corporation, Plaintiff,	)	
v.	)	Case No. 85-C-760-C
SHELTER INSURANCE COMPANIES, a Missouri corporation, Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON the 10 day of Feb, 1986, the Court having heard the parties Stipulation of Dismissal, and being well advised in the premises does hereby Order the above-captioned action to be dismissed with prejudice.

s/H DALE COOK

The Honorable H. Dale Cook

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

HURRICANE INDUSTRIES, INC.

Plaintiff(s),

vs.

HURRICANE FENCE COMPANY, INC.

Defendant(s).

No. 85-C-609-C ✓

JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

Dated this 10th day of February, 1986.

H. Dale Cook
UNITED STATES DISTRICT JUDGE
H. DALE COOK

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 76, UFCWIU, AFL-CIO, CLC,	)	
Plaintiff,	)	
vs.	)	No. 85-C-583-C
BILLY S. YEAKEY, SR. and BILLY S. YEAKEY, JR., PARTNERS YEAKEY'S NEIGHBORHOOD GROCERY,	)	
Defendants.	)	

J U D G M E N T

This action came on for hearing before the Court, and the issues having been duly considered and a decision having been duly rendered,

IT IS ORDERED, ADJUDGED AND DECREED that the award of the arbitrator be enforced and that the plaintiff recover against the defendants its costs of action.

IT IS SO ORDERED this 11th day of February, 1986.

H. DALE COOK
Chief Judge, U. S. District Court

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
LENARD K. STEVENS,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 85-C-389-C

NOTICE OF DISMISSAL

COMES NOW the United States of America by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Peter Bernhardt, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 11th day of February, 1985.

UNITED STATES OF AMERICA

LAYN R. PHILLIPS
United States Attorney

PETER BERNHARDT
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 11th day of February, 1986, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Lenard K. Stevens, 4214 South 109th East Avenue, Apartment 2007, Tulsa, Oklahoma 74146.

Assistant United States Attorney

JBS/sl

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FLOYD H. CASKEY, SHAWN C. CASKEY, a minor, by and through his father and next friend, FLOYD H. CASKEY, TODD A. CASKEY, a minor, by and through his father and next friend, FLOYD H. CASKEY, and SCOTT CASKEY, a minor, by and through his father and next friend, FLOYD H. CASKEY,	Case No.: ~~84-C-153-C~~ 85-C-153-C
Plaintiffs,	
vs.	
SOUTH PRAIRIE CONSTRUCTION CO., and GILBERT CENTRAL CORP., a foreign corporation,	
Defendants and Third Party Plaintiffs,	
vs.	
DEPARTMENT OF TRANSPORTATION, STATE OF OKLAHOMA,	
Third Party Defendant.	

ORDER OF DISMISSAL WITH PREJUDICE

NOW ON THIS 10 day of February, 1986, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into an agreed settlement covering all claims of Plaintiff and minor Plaintiffs involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action. The Court being

fully advised in the premises finds that the settlement is fair, just and reasonable and in the best interest of the Plaintiff and minor Plaintiffs and further finds that said Complaint should be dismissed with prejudice pursuant to said application.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and any Amended Complaints and all causes of action of the Plaintiffs filed herein against the Defendants and Third Party Plaintiffs, be and the same hereby are dismissed with prejudiced to any future action.

s/H. DALE COOK

JUDGE, DISTRICT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

ROBERT E. MARTIN,

Attorney for the Plaintiffs

JOHN B. STUART

Attorney for the Defendants

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 11 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UNITED FOOD AND COMMERCIAL WORKERS UNION LOCAL 76, UFCWIU, AFL-CIO, CLC,	)	
Plaintiff,	)	
vs.	)	No. 85-C-583-C
BILLY S. YEAKEY, SR. and BILLY S. YEAKEY, JR., PARTNERS YEAKEY'S NEIGHBORHOOD GROCERY,	)	
Defendants.	)	

O R D E R

This action was commenced by United Food and Commercial Workers Union Local 76 (Union) against Billy S. Yeakey, Sr. and Billy S. Yeakey, Jr. d/b/a Yeakey's Neighborhood Grocery (Yeakeys), in which plaintiff seeks enforcement of an arbitration award in its favor. The defendants seek to have the arbitral award vacated. Subject matter jurisdiction is invoked under section 301 of the Labor-Management Relations Act, 29 U.S.C §185.

The parties have filed cross motions for summary judgment and inform the Court that no genuine issue of material fact is controverted which would defeat summary judgment. The following documents were submitted for the Court's review: arbitrator's decision, transcript of arbitrator's hearing, exhibits and briefs submitted at the arbitrator's hearing and the collective bargaining agreement.

After considering the pleadings, briefs, exhibits, including the designated documents, case law, statutory authority, and

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being fully advised in the premises, the Court determines that plaintiff's request to enforce the arbitrator's award is granted.

On February 26, 1981, the parties executed a collective bargaining agreement covering certain of defendants' employees. The agreement covered a procedure for processing and adjusting grievances, culminating in arbitration which is "final and binding."

Plaintiff represents the interest of its grievant, Raymond L. Bennett, who had been hired by Yeakeys as manager of the meat market at its store located at 13th and Peoria Avenue, when it opened as Yeakey's Neighborhood Grocery on April 30, 1979. He was discharged on December 31, 1982, and on January 4, 1983, the Union filed a grievance in his behalf, alleging that the discharge was not for "just cause" as required by the collective bargaining agreement. The parties failed to settle their grievance and proceeded to arbitration. Hearings were held before a single arbitrator on May 26, 1983. On September 12, 1983, the arbitrator rendered his award which upheld the grievance filed by the plaintiff and ordered defendants to reinstate the grievant with full seniority and all contractual rights he possessed prior to discharge, reduced by grievant's actual earnings from alternate employment during the period of his wrongful discharge.

Defendants refused to comply with the arbitrator's award and plaintiff filed an action seeking enforcement of the award. The arbitration award was upheld in United Food and Commercial Workers Union Local 76, UFCWIU, AFL-CIO, CLC v. Billy S. Yeakey, Sr., and Billy S. Yeakey, Jr. partners in Yeakey's

Neighborhood Grocery, No. 83-C-857-E, August 16, 1984 (N.D. Okla.). All issues raised in that proceeding have res judicata effect.

Subsequently, the parties were unable to agree upon the amount of back pay and benefits due under the terms of the award, as upheld by the Court. The parties' having failed to settle their dispute, proceeded to arbitration. Hearings were held before the same arbitrator on February 15, 1985.

The issue before the arbitrator was: To what is grievant Raymond L. Bennett entitled under the opinion and award issued by the arbitrator on September 12, 1983?

On May 1, 1985, the arbitrator rendered his award in favor of the plaintiff and ordered as follows:

1. The termination of the grievant Raymond L. Bennett was not for just cause, and

2. He is to be paid as if he had been on the payroll from January 1, 1983 through December 31, 1983, including fringes, such as pay to be reduced only by the amount of Grievants actual earnings from alternate employment during this period, said earnings to be certified to the employer by grievant in writing;

3. Employer will tender to the Unions any Health and Welfare and Pension benefits owing for the period January 1 - December 31, 1983;

4. Grievant is separated from employment with the Company without prejudice at the end of the work day of December 31, 1983;

5. The parties will on or before May 15, 1985 mutually agree upon the amounts owing in 2 and 3 above and reduce same to writing, or in the alternative and

6. Absent such an agreement the amount due grievant is $22,198.53, the amount due Meat Cutters Local 644 and Retail Food Employers Health and Welfare

Trust Fund is $2862.48, and the amount due the UFCW Pension Fund is $1562.88;

7. Absent mutual agreement by the parties as to time and method of payment, all amounts are due and payable on or before May 15, 1985, and past due and owing after that date.

The defendants challenge the May 1, 1985, award by asserting:

1. The arbitrator's award is punitive in that compliance with the terms of the award, by remitting a lump sum payment to grievant, is impossible.

2. The arbitrator made a central factual assumption that is unsupported by the record evidence presented at the hearing. Defendants claimed at the hearing that grievant would have been laid off April 30, 1983, and therefore the award should only cover a back pay award from January 1, 1983, through April 30, 1983.

3. The arbitrator contravened a limitation contained in the collective bargaining agreement in that the defendants had the right to lay off employees and therefore the arbitrator's award should be limited to April 30, 1983, the date defendants' asserted grievant would have been laid off, rather than an award through December 31, 1983, as date of lay off factually determined by the arbitrator.

In a case brought under section 301, the Court's scope of review is very narrow. Campo Machining Co., Inc. v. Machinists and Aerospace Workers, 536, F.2d 330, 332 (10th Cir. 1976). The purpose of a collective bargaining agreement, and the requirement of arbitration thereunder, is to place upon industry a system of self-government. Steelworkers v. Warrior & Gulf Co., 363 U.S. 574, 580 (1959). This purpose would be circumvented if the courts were to independently review the merits of arbitral awards. Therefore, it is mandated that courts may not review the

merits of a grievance or an award. Mistletoe Express Serv. v. Motor Expressmen's Union, 566 F.2d 692, 694 (10th Cir. 1977). The arbitrator's decision on the merits is final and not reviewable. Campo Machining, supra. In other words, the Court may not sit as the initial fact finder in determining whether the grievant would have been laid off on April 30, 1983, as alleged by defendants at the arbitration hearing or on December 31, 1983, as found by the arbitrator after evidentiary hearing on the matter. In their briefs both parties argue vigorously the facts favorable to their position on this issue. The Third Circuit has aptly stated the limitations imposed on the courts, "the scope of our review in this case is an exceedingly narrow one, and employing the standard, we conclude that we are obliged to enforce the arbitrator's award, whatever misgivings we may have about its merits or wisdom." Kane v. Firemen and Oilers, 687 F.2d 673, 675 (3rd Cir. 1982). Yeakey argued before the arbitrator that the collective bargaining agreement provided the employer the absolute, unconditional right to lay off Raymond Bennett in his position as manager of the meat department. The Union argued that his position is subject to seniority considerations before lay-offs can be effectuated. The arbitrator has the express authority to handle "all controversies as to the interpretation or application of the provisions of this agreement" within Article 6 of the parties collective bargaining agreement. The arbitrator's findings represents a resolution of this factual issue by interpretation of the agreement. "Certainly it was his

obligation to resolve any conflict in construction." Arco-Polymers v. Oil, Chemical and Atomic Workers, 671 F.2d 752 (3rd Cir. 1982). Thus, the scope of review is indeed limited. This Court is not authorized to make factual determinations or contractual constructions independently, "[s]o long as the arbitrator reasons from his factual findings to his conclusion, and limits himself to interpreting and applying the agreement, a court must give great deference to the arbitrator's decision." Campo Machining Co., supra at 332. The province of judicial review in this area is limited to a determination as to whether the arbitrator's decision "drew its essence from the collective bargaining agreement." Kewanne Machinery Div. v. Teamsters, 593 F.2d 314, 316 (8th Cir. 1979). The Court's review of the arbitrator's decision regarding his factual determinations reveals that he did confine himself to interpreting and applying the terms of the collective bargaining agreement.

The defendants next argue that the remedy imposed by the arbitrator is punitive and in contravention to the terms of the collective bargaining agreement. In review of the collective bargaining agreement, the Court finds that the agreement is basically silent as to the remedies imposed for its breach. Defendants argue that under Article 6.4 the arbitrator has no power to change, add to, modify or alter the terms of the agreement. This same argument was raised in Fabricut, Inc. v. Tulsa General Drivers, 597 F.2d 227 (10th Cir. 1979), wherein the court said:

> The Arbitrator had authority to settle the dispute. In the absence of a contract specified penalty, the

> Arbitrator could fashion a reasonable penalty. In so doing he did not change the contract. He was making the contract workable. 597 F.2d at 229.

Under the authority of Fabricut, supra, the Court finds that the arbitrator's award was not punitive nor in contravention of the collective bargaining agreement.

Plaintiff seeks an award of attorney fees. The awarding of attorney fees is discretionary with the Court. It must be found that the refusal of defendants to abide by the arbitrator's award is in bad faith, vexatious, wanton or for oppressive reasons. Fabricut, supra. The Court does not find that defendants refusal to comply with the arbitration award of May 1, 1985, was motivated by bad faith. The Court therefore declines to award attorney fees to the plaintiff.

WHEREFORE, premises considered it is the Order of the Court that the motion of plaintiff United Food and Commercial Workers Union Local 76, UFCWIU, AFL-CIO, CLC, for summary judgment is hereby granted.

It is further Ordered that the motion for summary judgment of the defendant Billy S. Yeakey, Sr. and Billy S. Yeakey, Jr. d/b/a Yeakey's Neighborhood Grocery, is hereby denied.

It is further Ordered that plaintiff's request for attorney fees is denied.

IT IS SO ORDERED this 11th day of February, 1986.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SAUNDRA WALLACE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 85-C-787-C
	)	
HOTEL SYSTEMS INTERNATIONAL, SAN JUAN DUPONT PLAZA CORPORATION,	)	
	)	
Defendants.	)	

O R D E R

Now before the Court for its consideration is the motion of the defendant, San Juan Dupont Plaza Corporation, to transfer this action to the United States District Court for San Juan, Puerto Rico pursuant to 28 U.S. C. §1404(a).

Plaintiff, a resident of Tulsa County, Oklahoma, was allegedly assaulted and raped in the stairwell of defendant's hotel in San Juan, Puerto Rico. Plaintiff sued defendant, claiming that her injuries were allegedly caused by negligent security in defendant's hotel.

Defendant's motion to transfer is premise upon the following grounds:

1. Witnesses: the vast majority of witnesses reside in Puerto Rico. These witnesses include hotel officials and employees, investigative officers, physicians who treated plaintiff immediately after the event in question, security officers and expert witnesses.

2. Discovery: the hotel in question is located in Puerto Rico, therefore, a great deal of the

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discovery will need to be conducted in Puerto Rico. Further, there is a language barrier that may play a part in presentation of the case e.g. the investigative reports are written in Spanish.

3. Choice of law: the law of Puerto Rico will be the applicable law in this action.

4. Subpoena power: this Court lacks the power to compel the attendance of foreign witnesses, many of which have first hand knowledge of the event in question.

5. Forum non conveniens: the only significant contact this Court has with the action is that the plaintiff is a resident within its judicial district.

In response, the plaintiff asserts that several of her witnesses reside in Tulsa County, including, a rape counselor she consulted after the event, a former employee and her employer who were in Puerto Rico during the time of the alleged assault, a physician who treated her after her return to Tulsa, and an expert witness on security of hotels. Plaintiff also admits she has a witness who resides in Washington, D.C.

Upon review of the applicable law, the pleadings, briefs and supporting documents of the parties, and in application of the criteria set forth in 28 U.S.C. §1404(a), the Court finds that the most convenient and logical forum for plaintiff's claim is the federal district court of San Juan, Puerto Rico.

Therefore, premises considered, it is the Order of the Court that the motion of the defendant, San Juan Dupont Plaza Corporation, to transfer plaintiff's lawsuit from the Northern District of Oklahoma to the United States District Court for San Juan, Puerto Rico, is hereby granted.

It is the further Order of the Court that defendant's motion to dismiss is moot.

IT IS SO ORDERED this 10th day of February, 1986.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PUMPJACK II, A Limited Partnership, Plaintiff, vs. PHOENIX ENERGY CORPORATION, JIM T. SPEARS, An Individual, WORDEN W. PARRISH, JR. An Individual, and JAMES C. RICHARD, An Individual. Defendants.	)	Case No. 83-C-655-E

Notice of DISMISSAL WITH PREJUDICE

COMES NOW the Plaintiff, Pumpjack II, Ltd. an Illinois limited partnership, and dismisses the Petition filed in the above-styled and numbered cause with prejudice as against the Defendants, Phoenix Energy Corporation, Jim T. Spears and Worden W. Parrish, Jr.

SNEED, LANG, ADAMS,
HAMILTON, DOWNIE & BARNETT

By Melinda J. Martin

Melinda J. Martin
Sixth Floor
114 East Eighth Street
Tulsa, Oklahoma 74119
(918) 583-3145

Attorneys for Plaintiff

CERTIFICATE OF MAILING

I, Melinda J. Martin, do hereby certify that on the 10th day of February 1988, I caused to be mailed a true and correct copy of the above and foregoing instrument, proper postage thereon prepaid, to:

Lynnwood R. Moore, Jr., Esq.
Conner Winters Ballaine Barry & McGowen
2400 First National Tower
Tulsa, Oklahoma 74103

Thomas R. Crook, Esq.
2323 South Sheridan Road
Tulsa, Oklahoma 74129

Melinda J. Martin
Melinda J. Martin

Entered

FILED

FEB -7 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARY BOLTINGHOUSE and ROBERT BOLTINGHOUSE Plaintiff, vs. PREFERRED RISK MUTUAL INSURANCE COMPANY Defendant.	)	Case No.: C-85-C659-B

ORDER OF DISMISSAL

ON This 7 day of ~~January~~ February 1986, upon the written application of the parties for a Dismissal with Prejudice of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into an agreed settlement covering all claims involved in the Complaint and have requested the Court to dismiss said Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the defendant be and the same hereby is dismissed with prejudice to any future action.

S/ THOMAS R. BRETT

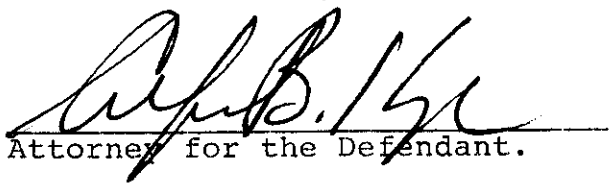
JUDGE, DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF OKLAHOMA

APPROVALS:

PATRICK E. CARR,

Attorney for the Plaintiff,

ALFRED B. KNIGHT,



Attorney for the Defendant.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

L. C. RHOADS, Plaintiff,	)	
vs.	)	No. 84-C-811-E
AGNES SMITH HAMMOND, Defendant,	)	
vs.	)	
HELEN L. RHOADS, Third Party Defendant.	)	

JUDGMENT

This action came on for hearing before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that the Defendant, Agnes Smith Hammond, recover judgment in personam and in rem concerning the following described property:

> Lots One (1) Through Twenty-four (24), Block Eighteen (18), KNOB HILL ADDITION to the City of Cleveland, in Pawnee County, State of Oklahoma, according to the recorded plat thereof

against the Plaintiff, L. C. Rhoads, and the Third Party Defendant, Helen L. Rhoads, on the counterclaim and third party claim in the amount of $94,060.19, plus interest at the rate of 7% per annum until judgment, plus interest thereafter at the rate of 7.85% per annum until paid, plus a reasonable attorney's fee to be set upon application, the costs of abstracting, and the

costs of the counterclaim and third party claim.

DATED at Tulsa, Oklahoma this 7th day of February, 1986.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

IMA DEAN BARNETT and now deceased husband, WILLIAM J. BARNETT, Plaintiffs,	)	
vs.	)	No. 85-C-881
GLEN CAGLE, District Director, Internal Revenue Service; Internal Revenue Service Center, Southwest Region, Defendants.	)	

O R D E R

Now before the Court for its consideration is the motion of defendant United States of America, the real party in interest, to dismiss the First Amended Complaint of the plaintiffs, said motion filed herein December 30, 1985. The plaintiffs' having responded, the matter is now ready for this Court's determination.

Plaintiff Ima Barnett alleges that on or about March 3, 1984, she filed a joint income tax return for the period of January 1, 1983, to December 31, 1983, and received an income tax refund in the amount of $47,828.00 for this period. On June 21, 1985, defendant assessed and made demand on the plaintiff for an immediate tax deficiency in the sum of $51,707.00 plus $21,466.93, interest and penalties for the disallowance of plaintiff's 1983 investment tax credit. Plaintiff has repaid to the Internal Revenue Service the amount of $47,828.00,

representing the amount of the investment tax credit which was disallowed, although not the amount claimed as a tax deficiency by the defendant.

As her grounds for relief, plaintiff alleges the deficiency assessment is illegal in that the investment tax credit was proper as an ordinary and necessary expense of a legitimate business activity. She also asserts that out of approximately 300 investors in American Educational Leasing Corporation, all of whose investment tax credits have been disallowed, plaintiff is the only one being required to pay the full amount assessed prior to a decision in a pending federal district court case between the Internal Revenue Service and American Educational Leasing Corporation, currently set for trial in February of 1986. Plaintiff claims this different treatment constitutes a violation of her constitutional right to equal protection. Lastly, plaintiff alleges that her poor health, stemming from stress and heart problems brought on by her husband's death and by the Internal Revenue Service's demands, prevented her from being able to understand or react to the statutory time limits for bringing an action for relief in Tax Court. These facts and circumstances, alleges plaintiff, comprise an exception to the Anti-Injunction Act, 26 U.S.C. §7421(a), and thus bring this action within the jurisdiction of this Court.

Plaintiff prays for a permanent injunction, pending the outcome of the other lawsuit, United States of America v. American Educational Leasing Corporation, and for an order restraining the IRS from levying on or taking any steps for

collection of the deficiency assessment. Plaintiff also prays for full credit to be given for the repayment of the credit in the amount of $47,828.00; for all liability for interest and penalties to be set aside; for declaratory judgment that plaintiff's entire liability to the United States of America is satisfied by the payment heretofore made; for a full refund of the sums paid to the IRS, contingent upon the decision in the other pending case; and for an order granting the right to a conference with concerned government agencies to arrange for full settlement of all issues not disposed of by this Court's order herein.

Under 26 U.S.C §7421(a), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, unless that person falls within one of the enumerated exceptions.

First, in the absence of statutory exceptions, this Court would have jurisdiction in a tax case only after the taxpayer had paid the assessed taxes in full and then sues for the recovery thereof. Although plaintiff sent the IRS the amount of $47,828.00, this did not satisfy the assessed and demanded tax deficiency of $51,707.00 plus interest and penalties.

Second, the Court finds no violation of equal protection, in the absence of any evidence that plaintiff has not been treated the same as any other similarly situated taxpayer.

Third, the Court notes that both recognized exceptions to the Anti-Injunction Act, 26 U.S.C 7421(a), are inapplicable here.

One, plaintiff has not clearly shown that under no circumstances could the government prevail. See Enochs v. Williams Packing Co., 370 U.S. 1, (1969) and two, plaintiff has not shown a lack of access to judicial review. See Investment Annuity, Inc. v. Blumenthal, 77-2 U.S.T.C. 88,441 (Nov. 9, 1977). Thus, it appears plaintiff's suit is barred by the Anti-Injunction Act.

IT IS THEREFORE ORDERED that the motion of defendant to dismiss should be and hereby is granted.

IT IS SO ORDERED this 6th day of February, 1986.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

B. L. DIEHNEL,

Plaintiff,

vs.

No. 85-C-1016

TAMNY CORPORATION, an Oklahoma corporation, and PETROLEUM FERMENTATION, INC., a Delaware corporation, a/k/a PETROFERM USA,

Defendants.

O R D E R

The Court has before it a petition of defendant Petroleum Fermentation, Inc. (Petroferm) for removal, said petition filed herein on November 8, 1985. Petroferm alleges, as its grounds for removal, that "if Plaintiff has stated any claim against Petroferm, which Petroferm denies, the claim is a separate and independent claim or cause of action, within the meaning of 28 U.S.C. §1441(c) which would be removable under 28 U.S.C. §1441(a) based on diversity of citizenship, if sued upon alone."

By Minute Order dated January 23, 1986, this Court ordered Petroferm to provide it with information to support its assertion that this case contains such a "separate and independent claim ... removable ... if sued upon alone," or face a sua sponte order remanding this action to state court as improperly removed. Accordingly, defendant Petroferm submitted its brief in support

of its removal petition on February 3, 1986. As such, the matter is now ready for this Court's determination.

Plaintiff's petition, filed in state court on October 9, 1985, alleges, as against defendants Tamny Corporation and Petroferm, a cause of action for breach of an employment agreement and for declaratory judgment to establish certain portions of the parties' agreement as null and void. The petition alleges that defendant Petroferm is an affiliated parent corporation of Tamny Corporation and that the joint actions of the two defendants constituted the employment contract breach complained of. Additionally, plaintiff alleges he is an individual residing in Pawnee County, Oklahoma, while defendant Tamny Corporation is an Oklahoma corporation with its principal place of business located in Tulsa, Tulsa County, Oklahoma. Defendant Petroferm is a Delaware corporation.

The Court has carefully reviewed the plaintiff's petition and the brief of the defendant Petroferm in support of its removal petition, together will all other filings in this case. Based upon this review, the Court concludes that this action was improperly removed to this Court. It is clear there is no diversity between the parties, and it is equally clear that no federal question cause of action has been pleaded. Although defendant Petroferm asserts the plaintiff has stated a separate or independent cause of action which is removable, the Court fails to glean such information nor make any such determination from its review of the record before it.

WHEREFORE, IT IS THE ORDER OF THE COURT that this action be remanded to the District Court in and for Tulsa County, Oklahoma, from which it was improperly removed.

IT IS SO ORDERED this 6th day of February, 1986.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CELTIC LIFE INSURANCE COMPANY,	)	
	)	
Plaintiff,	)	No. 84-C-880-B
	)	
v.	)	
	)	
ROSE STANTON, individually and as executrix of the estate of Doyle R. Waldrop Sr., deceased,	)	
	)	
Defendant.	)	

J U D G M E N T

In keeping with the verdict of the jury returned and filed herein on the 6th day of February, 1986, IT IS HEREBY ORDERED AND ADJUDGED that the plaintiff, Celtic Life Insurance Company, is to have jave judgment against defendant Rose Stanton, individually and as executrix of the estate of Doyle R. Waldrop Sr., deceased, on plaintiff's claim that the deceased was injured at the time of his automobile accident in consequence of intoxication and that as a result medical expense coverage is excluded under the terms of the deceased's insurance policy with plaintiff and that, therefore, defendant shall take nothing thereon. Costs will be awarded to the plaintiff if timely application is made pursuant to the local rules.

DATED, the 6th day of February, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

BK 94
(Rev. 11/82)

United States Bankruptcy Court

For the Western District of Tennessee

GORDONS TRANSPORTS, INC.,

DEBTOR.

No. 83-20481

Adv. No. 84-0234

A. J. CALHOUN, TRUSTEE

Plaintiff,

v.

B & M OIL COMPANY

Defendant

m-1261-E

CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

I, GEORGE W. EMERSON, JR., Clerk of the United States Bankruptcy Court for the WESTERN District of TENNESSEE, do hereby certify the annexed to be a true and correct copy of the original judgment entered in the above entitled proceeding on October 30, 1984, as it appears of record in my office, and that* no notice of appeal from said judgment has been filed in my office and the time for appeal commenced to run on October 30, 1984, upon entry of judgment.

[Seal of the U.S. Bankruptcy Court]

George W. Emerson Jr.
Clerk of Bankruptcy Court

Date of issuance: January 22, 1986 By: Carlene M. Hass
Chief *Deputy Clerk*

**When no notice of appeal from the judgment has been filed, insert "no notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run on *[insert date]* upon the entry of the judgment". If an appeal was taken, insert "a notice of appeal from the said judgment was filed in my office on *[insert date]* and the judgment was affirmed by mandate of the Appellate Court issued *[insert date]*" or "a notice of appeal from the said judgment was filed in my office on *[insert date]* and the appeal was dismissed by the Appellate Court on *[insert date]*".

United States Bankruptcy Court

For the WESTERN District of TENNESSEE

EXEMPLIFICATION CERTIFICATE

I, Joan M. Broxterman Deputy, Clerk of the Bankruptcy Court for the Western District of Tennessee, and keeper of the records and seal thereof, hereby certify that the documents attached hereto are true copies of Default Judgment entered October 30, 1984 in the case of Gordons Transports, Inc. 83-20481 ADV NO. 84-0234

now remaining among the records of the court.
In testimony whereof I hereunto sign my name, and affix the seal of the court at Memphis in the State of Tennessee, this 21st day of January, 19 86.

[Seal of the U.S. Bankruptcy Court]

Joan M. Broxterman
Deputy *Clerk of Bankruptcy Court*

I, William B. Leffler, Bankruptcy Judge for the Western District of Tennessee, do hereby certify that Joan M. Broxterman, whose name is above written and subscribed, is and was at the date thereof, Clerk of this court, duly appointed and sworn, and keeper of the records and seal thereof, and that the above certificate by him made, and his attestation or record thereof, is in due form of law.

Dated: 1-21-86.

William B. Leffler,
Bankruptcy Judge

I, Joan M. Broxterman Deputy, Clerk of the Bankruptcy Court for the Western District of Tennessee, and keeper of the seal thereof, hereby certify that the Honorable William B. Leffler, whose name is above written and subscribed, was on the 21st day of January, 19 86, and is now Judge of this court, duly appointed, confirmed, sworn and qualified; and that I am well acquainted with his handwriting and official signature and know and hereby certify the same above written to be his.
In testimony whereof I hereunto sign my name, and affix the seal of the court at Memphis in the State of Tennessee on this 21st day of January, 19 86.

[Seal of the U.S. Bankruptcy Court]

Joan M. Broxterman,
Deputy *Clerk of Bankruptcy Court*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

IN RE

GORDONS TRANSPORTS, INC. CASE NO. 83-20481

DEBTOR

A. J. CALHOUN, TRUSTEE

Plaintiff

vs

B & M OIL COMPANY

Defendant ADVERSARY NO. 84-0234

JUDGMENT ON DECISION BY THE COURT

This procceding came on for trial (hearing) before the Court, the Honorable William B. Leffler, United States Bankruptcy Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED:

THAT in accordance with Order entered 10-29-84 judgment is hereby entered.

APPROVED:

/s/ WILLIAM B. LEFFLER

United States Bankruptcy Judge

Dated at Memphis, TN, this 30th day of October, 19 84

E. L. MONTEITH, JR.

Clerk of the Court

This document entered on docket sheet in compliance with rule 58 and/or 79(a) FRCP on October 30, , 1984

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

IN RE:

GORDONS TRANSPORTS, INC., BANKRUPTCY NO. 83-20461

DEBTOR

A. J. CALHOUN, TRUSTEE FOR
GORDONS TRANSPORTS, INC.,

PLAINTIFF,

VS ADV. NO. 84-0234

B & M OIL COMPANY

DEFENDANT.

DEFAULT JUDGMENT

THIS MATTER COMES ON FOR TRIAL THIS 25TH DAY OF OCTOBER, 1984, UPON APPLICATION FOR JUDGMENT BY DEFAULT FILED HEREIN BY THE PLAINTIFF. UPON REVIEW OF THE PLEADINGS FILED HEREIN, THE COURT FINDS AS FOLLOWS:

THAT THE ABOVE-STYLED AND NUMBERED ADVERSARY PROCEEDING WAS COMMENCED BY THE FILING OF A COMPLAINT UNDER SECTION 542(B) OF THE BANKRUPTCY CODE BY TRUSTEE; THAT SUMMONS AND NOTICE OF TRIAL WAS DULY ISSUED ON SAID COMPLAINT FROM THE OFFICE OF THE CLERK OF THE BANKRUPTCY COURT; THAT A COPY OF THE AFORESAID SUMMONS AND NOTICE OF TRIAL, TOGETHER WITH A COPY OF THE AFORESAID COMPLAINT WAS DULY AND TIMELY SERVED ON DEFENDANT HEREIN BY

FIRST CLASS MAIL, POSTAGE PREPAID, CERTIFIED WITH RETURN RECEIPT REQUESTED, AS SHOWN BY THE CERTIFICATION OF SERVICE ON FILE HEREIN; THAT THE DATE BY WHICH DEFENDANT WAS REQUIRED TO SERVE UPON PLAINTIFF A MOTION OR ANSWER TO SAID COMPLAINT HAS PASSED, AND, THE DATE BY WHICH DEFENDANT WAS REQUIRED TO FILE A MOTION OR ANSWER WITH THE COURT HEREIN HAS PASSED; THAT BASED UPON ALL INFORMATION WITHIN THE KNOWLEDGE OF PLAINTIFF, THE FACTS OF SAID COMPLAINT ARE TRUE; AND THAT JUDGMENT BY DEFAULT SHOULD BE ENTERED HEREIN AGAINST DEFENDANT GRANTING THE RELIEF DEMANDED IN THE AFORESAID COMPLAINT.

THE PLAINTIFF HAS MADE OR CAUSED TO BE MADE AN INVESTIGATION AND HAS DETERMINED THAT DEFENDANT IN THE ABOVE-ENTITLED PROCEEDING IS NOT IN THE MILITARY SERVICE OF THE UNITED STATES; NOR IS SAID DEFENDANT AN INFANT; NOR IS SAID DEFENDANT AN INCOMPETENT.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT THAT JUDGMENT BE GRANTED IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANT, IN THE SUM OF $1,254.48, TOGETHER WITH INTEREST AT THE RATE OF 10% PER ANNUM FROM THE DATE OF DEMAND, IN THE SUM OF $341.21, AND COURT COSTS ACCRUED HEREIN.

William B. [illegible]

JUDGE

DATED: October 29, 1984

Entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 6 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
STANLEY JOE RIGSBY,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 85-C-122-B

ORDER OF DISMISSAL

Now on this 4th day of February, 1986, it appears that the Defendant in the captioned case has not been located within the Northern District of Oklahoma, and therefore attempts to serve Stanley Joe Rigsby have been unsuccessful.

IT IS THEREFORE ORDERED that the Complaint against Defendant, Stanley Joe Rigsby, be and is dismissed without prejudice.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

J.W. "RAY" SMITH,

Plaintiff,

vs.

FIRST NATIONAL BANK AND TRUST COMPANY OF TULSA, a banking corporation,

Defendant.

No. 85-C-984

O R D E R

Now before the Court for its consideration is the motion of plaintiff J.W. "Ray" Smith to remand, said motion filed herein on November 27, 1985. The defendant's having responded, the matter is now ready for this Court's determination.

Plaintiff filed his petition in the Tulsa County District Court on October 4, 1985, alleging that as an employee of defendant, plaintiff "participated in and made contributions to the retirement program and thrift plan offered by the defendant, and received benefits such as paid vacation, health insurance coverage, and life insurance coverage."

Plaintiff further alleged the following facts:

> On October 5, 1983, the Defendant ... terminated the Plaintiff's employment ....
>
> At the time of the termination of Plaintiff's employment, the Plaintiff was 52 years of age, and had 9 years and 4 months seniority with the Defendant. The Plaintiff would have vested in the Defendant's retirement plan as of June 1, 1984, and have been entitled to a retirement benefit of $343.00 per month at age 65.
>
> That Defendant's termination of Plaintiff's employment was without cause, was in bad faith toward the Plaintiff, and was for the sole and only purpose of

> preventing the Plaintiff from vesting in Defendant's retirement plan, and further preventing the Plaintiff from receiving benefits from Defendant's thrift plan, group health care and life insurance coverage, and other benefits to which the Plaintiff was entitled as an employee of the Defendant ....
>
> That by reason of the Defendant's aforesaid bad faith termination of Plaintiff's employment, the Defendant has breached its implied duty of good faith toward the Plaintiff in Plaintiff's employment contract with the Defendant.
>
> That as a result of Defendant's aforesaid breach of contract, Plaintiff has suffered actual damages in the amount of $760,068.00, which Plaintiff reserves the right to amend at time of trial.

In addition, plaintiff prayed for punitive damages in the amount of $1,250,000.00, attorney fees, costs and other equitable and just relief. Defendant removed the petition to this Court on October 28, 1985, alleging the petition filed by Plaintiff "is a civil action maintainable in this Court because it is brought to enforce an alleged liability said to arise under the Employee Retirement Income Security Act of 1974 ...." Plaintiff challenges this characterization of his cause of action in the instant motion.

Initially, this Court must determine the true nature of plaintiff's complaint and will not allow artful pleading to circumvent a determination of what would otherwise be the proper forum for the case. See Mobil Oil Corp. v. Coastal Petroleum Co., 671 F.2d 419, 422 (11th Cir. 1982); Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d §3722 (1985).

The substance of plaintiff's complaint is that defendant unlawfully terminated his employment to deprive him of retirement, thrift plan and health and life insurance benefits to which

he had contributed and that this action gives rise to a common law action for bad faith or wrongful termination of employment. These allegations form an ERISA cause of action.

The Employment Retirement Income Security Act (ERISA), 29 U.S. §1001 et seq., prohibits the discharge of an employee "for the purpose of interfering with the attainment of any right to which such participant may become entitled ..." 29 U.S.C §1140. Violations of this section are enforceable through a private action under §1132. ERISA contains a supersedure clause, which provides for preemption of "all State laws insofar as they ... relate to any employee benefit plan ...." 28 U.S.C §1144(a). This preemption principle applies in its broadest sence to laws, decisions, rules, regulations or other state action having the effect of law ..." 29 U.S.C. §1144(c)(1). See King v. James River-Pepperell, Inc., 593 F.Supp. 1344 (D. Mass. 1984).

Thus, the Court finds the plaintiff's cause of action is preempted by federal law as arising under the preemptive umbrella of ERISA. See also, Folz v. Marriot Corp., 594 F. Supp. 1007, 1020 (W.D. Mo. 1984) (citing types of actions preempted by ERISA, including common law breach of contract actions relating to employee benefits).

With this initial determination made, the Court now must address the procedural posture of this case. Because federal law preemptively controls this action, it follows that the state court from which this action was removed had no subject matter jurisdiction over the claim. Because removal jurisdiction is derivative in nature, this Court acquired no jurisdiction upon

removal. It is well-settled that "if the state court lacks jurisdiction over the subject matter or the parties, the federal court acquired none upon removal, even though the federal court would have had jurisdiction if the suit had originated there." Arizona v. Manypenny, 451 U.S. 232, 242 fn. 17 (1981). See Goodrich v. Burlington Northern R.R., 701 F.2d 129 (10th Cir. 1983). Accord, Franchise Tax Board of California v. Construction Laborers Vacation Trust for So. Calif., 463 U.S. 1, fn 27 (1983).

Accordingly, this Court's having no basis for jurisdiction over the claims presented herein, IT IS THE ORDER OF THE COURT that this action should be and hereby is dismissed.

IT IS SO ORDERED this 6th day of February, 1986.

H. DALE COOK
Chief Judge, U. S. District Court

Entered

FILED

FEB -6 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GEORGE MICHAEL BRIDGEMAN and FREDA B. BRIDGEMAN, husband and wife,	)	
Plaintiffs,	)	
vs.	)	No. 85-C-323-B
LELAND EQUIPMENT COMPANY, a foreign corporation, and GROVE MANUFACTURING COMPANY, a foreign corporation,	)	
Defendants.	)	

J U D G M E N T

This action came on for trial before the Court and a jury, and the issues having been duly tried and the jury having duly rendered its verdict on February 5, 1986,

IT IS ORDERED AND ADJUDGED that the plaintiff, George Michael Bridgeman, recover of the defendants, Leland Equipment Company and Grove Division of Kidde Corporation, the sum of $57,372.35, with interest thereon at the rate of 15% per annum (12 O.S. §727) from the date of April 1, 1985 to this date and the rate of 7.85% per annum (28 U.S.C. §1961) from this date, and his costs of the action if timely applied for under the Local Rules.

IT IS FURTHER ORDERED AND ADJUDGED that the plaintiff, Freda B. Bridgeman, take nothing on her claim against defendants, Leland Equipment Company and Grove Division of Kidde Corporation. The parties are to pay their own respective costs.

Leland Equipment Company and the Grove Division of Kidde Corporation are hereby granted judgment on plaintiffs' claims for alleged punitive damages.

Dated at Tulsa, Oklahoma, this 6th day of February, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB -6 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

STATE SUPPLY WAREHOUSE COMPANY, Plaintiff, v. EILEEN M. KRAMER, d/b/a STATE BEAUTY SUPPLY OF ST. CHARLES, and STATE BEAUTY SUPPLY OF ST. CHARLES, INC., Defendants, JAMES LEWIS, FRANCIS GOELLNER, JR., and STATE BEAUTY SUPPLY OF ST. LOUIS, Counterclaim Defendants.	)	No. 84-C-613-B

J U D G M E N T

In keeping with the verdict of the jury returned and filed herein on the 30th day of January, 1986,

IT IS HEREBY ORDERED AND ADJUDGED

that the plaintiff, State Supply Warehouse Company, have judgment against defendants, Eileen M. Kramer and State Beauty Supply of St. Charles, Inc., on plaintiff's claim on the promissory note in the amount of $16,705.58 with interest thereon at 7.85 percent per annum from this date,

Counterclaim defendants, Francis Goellner, Jr., and State Beauty Supply of St. Louis, are to have judgment against defendants, Eileen M. Kramer and State Beauty Supply of St. Charles, Inc., on their counterclaim on the promissory note and open account in the amounts of $18,408.00 and $1626.00, respectively, with interest at 7.85 percent per annum from this date,

Plaintiff, State Supply Warehouse Company, and Counterclaim defendant, James Lewis, are to have judgment against defendants, Eileen M. Kramer and State Beauty Supply of St. Charles, on defendants' counterclaims for breach of the franchise agreement, tortious interference with the contract for sale of defendants' business, and conspiracy, and defendants are to take nothing thereon,

Counterclaim defendants, Francis Goellner, Jr., and State Beauty Supply of St. Louis, are to have judgment against defendants, Eileen M. Kramer and State Beauty Supply of St. Charles, on defendants' counterclaims for breach of contract to purchase defendants' business, tortious interference with defendants' franchise agreement, and conspiracy, and defendants are to take nothing thereon.

IT IS FURTHER ORDERED that the franchise agreement between Plaintiff State Supply Warehouse Company and Defendants, Eileen M. Kramer and State Beauty Supply of St. Charles, is terminated for breach of the franchise agreement by defendants' failing to pay for products on a timely basis, breaching the credit terms of the franchise agreement, and defaulting on the promissory note between defendants and State Supply Warehouse Company. The costs of this action and a reasonable attorney's fee on the applicable claims will be assessed against the defendants, Eileen M. Kramer and State Beauty Supply of St. Charles, if timely applied for pursuant to local rules.

IT IS SO ORDERED, this 7th day of February, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TERESSA SEVCIK, MERLE "KIT" McMULLAN and SYLVIA SLOAN, Plaintiffs,	)	
v.	)	No. 84-C-554-B
TULSA EXCELSIOR HOTEL, TRUSTHOUSE FORTE HOTELS, INC., and TRUSTHOUSE FORTE MANAGEMENT COMPANY, INC., Defendants.	)	

J U D G M E N T

Pursuant to the Findings of Fact and Conclusions of Law entered this date, IT IS HEREBY ORDERED the plaintiff, Teressa Sevcik, is to have judgment against the defendants, Tulsa Excelsior Hotel, and Trusthouse Forte Management Company, Inc., in the amount of Two Hundred Fourteen and 20/100 Dollars ($214.20), interest thereon at the rate of 7.85% per annum from this date, and the costs of this action relative to the plaintiff Sevcik's claim as well as a reasonable attorney's fee regarding said claim, if timely applied for under the Local Rules.

IT IS FURTHER ORDERED the plaintiffs, Merle "Kit" McMullan and Sylvia Sloan take nothing on their claims, judgment thereon being rendered for the defendants herein. The costs on said McMullan and Sloan claims are assessed against the plaintiffs and the parties are to pay their own respective attorney's fees on said claims.

DATED this 5th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

54

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CONTINENTAL WESTERN INSURANCE COMPANY,	)	
Plaintiff,	)	
vs.	)	No. 85-C-255-C
PAUL J. BRIDSTON, SARA MELISSA BRIDSTON, and MARTIN R. LAIRD,	)	
Defendants.	)	

ORDER

NOW on this 6 day of ~~January~~ February, 1986, upon Stipulation of the parties, the above cause of action is dismissed with prejudice as to the defendants, Paul J. Bridston, Sarah Melissa Bridston and Martin R. Laird, and the Counterclaim of Paul J. Bridston and Sarah Melissa Bridston is withdrawn.

s/H. DALE COOK

JUDGE

United States District Court

FOR THE

DISTRICT OF MINNESOTA - FOURTH DIVISION

M-1260-CV

CIVIL ACTION FILE NO. 4-85-492

Tri-State Drilling & Equipment Co.

vs.

Tower Fabricators, Inc.

JUDGMENT

CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

I, Francis E. Dosal, Clerk of the United States District Court for the _____ District of Minnesota, do hereby certify the annexed to be a true and correct copy of the original judgment entered in the above entitled action on May 10, 1985, as it appears of record in my office, and that no notice of appeal from the said judgment has been filed in my office * and the time for appeal commenced to run on May 10, 1985 upon the entry of the judgment.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of the said Court this 30th day of January, 19 86

FRANCIS E. DOSAL, Clerk

By Cynthia Francis Deputy Clerk

* When no notice of appeal from the judgment has been filed, insert "no notice of appeal from the said judgment has been filed in my office and the time for appeal commenced to run on [*insert date*] upon the entry of [If no motion of the character described in Rule 73(a) F.R.C.P. was filed, here insert 'the judgment', otherwise describe the nature of the order from the entry of which time for appeal is computed under that rule.] If an appeal was taken, insert "a notice of appeal from the said judgment was filed in my office on [*insert date*] and the judgment was affirmed by mandate of the Court of Appeals issued [*insert date*]" or "a notice of appeal from the said judgment was filed in my office on [*insert date*] and the appeal was dismissed by the [insert 'Court of Appeals' or 'District Court'] on [*insert date*]", as the case may be.

By: _____ Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Tri-State Drilling & Equipment Co.

Against

Tower Fabricators, Inc.

JUDGEMENT BY DEFAULT

No. 4-85 Civil 492

Affidavit of default, disbursements, identification and non-military service having been filed by plaintiff's attorney , and

It appearing that the above-named defendant has been duly served with process, and that more than twenty days have elapsed since said service, and that said defendant has failed to appear or plead in this cause.

Now, on motion of said plaintiff's attorney , a default is hereby entered herein and, it is

CONSIDERED, ORDERED AND ADJUDGED That the above-named plaintiff do have and recover of and from the said defendant the sum of Two Hundred Twenty-Two Thousand, Five Hundred Fifty-Nine and no/100 Dollars ($222,559.00) the amount demanded in the complaint, besides the costs and disbursements of this action, taxed at

Dollars ($) and that said plaintiff do have execution therefor.

Judgement signed this 10th day of May A.D. 1985

Damages $ 222,559.00

Costs $

Total $ 222,559.00

ROBERT E. HESS, CLERK

Cynthia Frances

By Deputy.

A true copy in 1 sheets of
the original record in my custody.
Certified Jan 21 1986
Francis E. [illegible], Clerk
By: Christopher A Lewis
Deputy Clerk

(4)

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN RE: GRAND JURY
PROCEEDINGS - JUNE, 1985
CONCERNING STEPHANIE WHITE

No. 86-C-33-E

O R D E R

WHEREAS on this 16th day of January, 1986, the above styled matter comes on before the court for an initial appearance on the government's application for criminal contempt of court by Stephanie White.

Stephanie White is present in open court represented by Curtis Parks, attorney at Law; the government by John S. Morgan, Assistant United States Attorney.

White, by and through her counsel, advises the court that she is technically guilty of willfully disobeying the court's order to appear as directed, however, mitigation is presented by White which causes the court to conclude and order:

That, White has spent three (3) days in jail which should be adequate punishment for her actions;

That, White has shown proper remorse for her behavior, and,

That, the application for contempt should be henceforth dismissed, to all of which the government has no objection.

5

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THE COURT that Stephanie White having spent three (3) days in federal custody, having been technically guilty of contempt, but showing of proper remorse, should be and is ordered released instanter, and the application for further action hereon is dismissed.

Dated this 4th day of ~~January~~ Feb, 1986.

JAMES O. ELLISON
U.S. District Judge

Approved as to form:

CURTIS PARKS,
Attorney at Law

JOHN S. MORGAN
Assistant U.S. Attorney

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

J. D. COOK,

Plaintiff,

vs.

D.F.C.-1980 PROGRAM, LTD., an Oklahoma limited partnership; D.F.C.-1981 PROGRAM LTD., an Oklahoma limited partnership; DELAWARE FLOOD CO., an Oklahoma limited partnership; M. MICHAEL GALESI; EQUINOX OIL COMPANY, an Oklahoma corporation; WILLIAM DOUGLAS LAYTON; CLYDE G. LAYTON; STEPHEN D. LAYTON; CHARLES E. UNDERWOOD; L & G PETROLEUM COMPANY, a partnership; and LAYTON OIL COMPANY, a corporation,

Defendants.

No. 84-C-794-E

JOURNAL ENTRY OF JUDGMENT

This matter comes before the Court on the joint application of the parties for approval of a Journal Entry of Judgment. The Court, having reviewed the pleadings, motions and orders filed herein, having heard the representations of counsel for the parties, and being fully advised as to the premises, finds as follows:

1. Defendants M. Michael Galesi, William D. Layton, Delaware Flood Co., L & G Petroleum Company and Layton Oil Company, by and through their counsel of record, have agreed to allow a judgment to be entered jointly and severally against them and in favor of Plaintiff, J. D. Cook in the amount of

$335,000.00 plus a sum equal to the Internal Revenue Service assessment against Cook for tax year ending 1980, together with all interests and costs of such assessment.

2. The Judgment shall be paid to J. D. Cook pursuant to the Settlement Agreement entered into between the parties to this action, the terms and conditions of said Settlement Agreement being hereby incorporated into this Journal Entry of Judgment.

3. Defendants Equinox Oil Company, D.F.C.-1980 Program, Ltd., D.F.C.-1981 Program, Ltd., Clyde G. Layton, Stephen D. Layton and Charles E. Underwood are not jointly and severally liable for the indebtedness imposed by this judgment; these Defendants, and each of them, are dismissed with prejudice from Civil Action 84-C-794-E.

4. This Judgment includes, without specification, all court costs and attorneys' fees, and no motion for attorneys' fees or bill of costs shall be filed herein by any party.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff, J. D. Cook is awarded judgment jointly and severally against Defendants, M. Michael Galesi, William D. Layton, Delaware Flood Co., L & G Petroleum Company, and Layton Oil Company, in the amount of $335,000.00 plus a sum equal to the Internal Revenue Service assessment against J. D. Cook for the tax year ending 1980, together with all interest and costs of such assessment. The judgment rendered herein is joint and several as to each said Defendant and is to be paid to J. D.

Cook in accordance with the terms and provisions of the Settlement Agreement entered into between the parties.

IT IS FURTHER ORDERED, that Defendants Equinox Oil Company, D.F.C.-1980 Program, Ltd., D.F.C.-1981 Program, Ltd., Clyde G. Layton, Stephen D. Layton and Charles E. Underwood be and hereby are dismissed with prejudice and are not therefore liable for any part of the indebtedness imposed by this judgment.

Dated this 3rd day of February, 1986.

S/ JAMES O. ELLISON

James O. Ellison
Judge of the United States
District Court for the Northern
District of Oklahoma

Approved as to Form:

JONES, GIVENS, GOTCHER,
DOYLE & BOGAN, INC.

By: Michael J. Gibbons
Attorneys for Plaintiff

HALL, ESTILL, HARDWICK, GABLE,
COLLINGSWORTH & NELSON, INC.

By: Brad P. Keller
Attorneys for Defendants
Delaware Flood Co.,
M. Michael Galesi, Equinox
Oil Company, William Douglas
Layton, Clyde G. Layton,
Stephen D. Layton, and L & G
Petroleum Company

Donald E. Weichmann

Attorney for Layton Oil Company

FREESE & MARCH

By: _____

Attorneys for Charles E. Underwood

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

BURLINGTON NORTHERN RAILROAD COMPANY, a corporation, Plaintiff, vs. W. J. LAMBERTON, individually and d/b/a W. J. LAMBERTON OIL and/or LAMBERTON OIL; and CHEMICAL RESOURCES, INC., a corporation, Defendants and Third-Party Plaintiffs, vs. AMERICAN CYANAMID COMPANY, Third-Party Defendant.	)	No. 85-C-13-E

JUDGMENT

This action came on for a conference with Counsel on this 5th day of February, 1986. Plaintiff was represented by John A. Mackechnie and defendants by William K. Powers. Third-Party Defendant, American Cyanamid Company, was previously dismissed.

It has been determined upon recalculation of demurrage charges for the dates and cars in question that the applicable tariff rate for demurrage should be the rate that was previously charged less the penalty portion, this being due to the orders of the state health department issued to defendants to not unload the cars, thus preventing the unloading and causing the demurrage to be accrued. This results in a final charge of $14,867.72. The Court finds this rate and total charge to be fair, applicable, reasonable and otherwise lawful under the circumstances.

The Court further finds that the previous Order of this Court, staying this action and referring it to the Interstate Commerce Commission, should be and is hereby withdrawn, vacated and set aside.

WHEREFORE, plaintiff is granted a judgment against defendants, W. J. Lamberton, individually and d/b/a W. J. Lamberton Oil and/or Lamberton Oil; and Chemical Resources, Inc., a corporation, in the amount of $14,867.72, plus the costs of $60.00 filing this action, to be paid by defendants, W. J. Lamberton, individually and d/b/a W. J. Lamberton Oil and/or Lamberton Oil; and Chemical Resources, Inc., a corporation, all other costs to be borne by the parties, for all of which let execution issue.

S/ JAMES O. ELLISON

James O. Ellison
United States District Court

Approved:

John A. Mackechnie
Attorney for Plaintiff

William K. Powers
Attorney for Defendants

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JOHNNIE M. TALBOT,	)	
	)	
Defendant.	)	CIVIL ACTION NO. 85-C-689-E

DEFAULT JUDGMENT

This matter comes on for consideration this 4th day of January, 1986, the Plaintiff appearing by Layn R. Phillips, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendant, Johnnie M. Talbot, appearing not.

The Court being fully advised and having examined the file herein finds that Defendant, Johnnie M. Talbot, was served with Summons and Complaint on September 12, 1985. The time within which the Defendant could have answered or otherwise moved as to the Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant,

Johnnie M. Talbot, for the principal sum of $2,643.30, plus accrued interest of $24.29 as of May 31, 1981, plus interest thereafter at the rate of 4 percent per annum until paid, plus costs of this action, and all other and further relief as the Court deems just.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

Entered
Date, case already closed

FILED

FEB -5 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CRUMIE G. DELOZIER,

Plaintiff,

vs.

OLD REPUBLIC INSURANCE COMPANY, a foreign corporation,

Defendant.

No. 85-C-573-C

O R D E R

Now before the Court for its consideration is the Objection of Defendant to the Findings and Recommendations of the Magistrate and Motion to Reconsider, said objection and motion filed herein November 18, 1985. Because the plaintiff has responded, the Court will determine the matter, despite the fact that this objection and motion were filed more than a week out of time.

Plaintiff's Complaint was filed on June 14, 1985, and proper service was obtained upon the Insurance Commissioner on June 17, 1985. This Court entered its Order granting plaintiff a default judgment against defendant on July 18, 1985. Defendant filed a motion to set aside default judgment on July 24, 1985. This motion to set aside default judgment was referred to the Magistrate for Findings and Recommendations.

The Magistrate found the defendant cited no legal authorities in support of its motion, nor did it append a proposed answer to the motion. Various correspondence was

considered, establishing the defendant and its attorney were well acquainted with the subject matter of the lawsuit once it was served, convincing the Magistrate that their claim of confusion as to the subject of the lawsuit based on an inadvertent transposition of the last two numbers of the insurance policy in question was insufficient to provide a basis for excusable neglect. The Magistrate concluded that defendant established none of the allowable grounds for relief from a final judgment pursuant to Rule 60(b). Nor did the Magistrate find the defendant had satisfied the requirements set forth by the Tenth Circuit, which a moving party must fulfill in order to set aside a default judgment. See Barta v. Long, 670 F.2d 907 (10th Cir. 1982); In Re Stone, 588 F.2d 1316 (10th Cir. 1978); Gomes v. Williams, 420 F.2d 1364 (10th Cir. 1970). Thus, the Magistrate determined, considering all the facts and circumstances, that the motion to set aside the default judgment should be denied.

The Court has independently reviewed the pleadings and briefs of the parties in the case file and finds that the Findings and Recommendations of the Magistrate are reasonable under the circumstances of this case and consistent with the applicable law.

THEREFORE, IT IS THE ORDER OF THE COURT that the objections of the defendant to the Findings and Recommendations of the Magistrate and its motion to reconsider should be and hereby are

denied. The Court hereby affirms and adopts the Findings and Recommendations of the Magistrate entered on October 31, 1985.

IT IS SO ORDERED this 4th day of February, 1986.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

KELLEY LYNN MURRAY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.: 85-C-506 E
	)	
GREAT SOUTHERN COMPANY, RYDER TRUCK RENTAL, and ROBERT S. McDONALD,	)	
	)	
	)	
Defendants.	)	

ORDER OF DISMISSAL

ON This 4th day of ~~January~~ Feb., 1986, upon the written application of the parties for a Dismissal with Prejudice, of the Complaint and all causes of action, the Court having examined said application, finds that said parties have entered into a compromise settlement covering all claims involved in the Complaint and have requested the Court to dismiss the Complaint with prejudice to any future action, and the Court being fully advised in the premises, finds that said Complaint should be dismissed pursuant to said application.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the Complaint and all causes of action of the Plaintiff filed herein against the defendant be ad the same hereby is dismissed with prejudice to any future action.

S/ JAMES O. ELLISON

JUDGE, DISTRICT COURT OF THE UNITED STATE, NORTHERN DISTRICT OF OKLAHOMA

Approvals:

GERALD K. DONOVAN

Gerald K Donovan

Attorney for the Plaintiff,

STEPHEN C. WILKERSON,

Attorney for the Defendants.

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB -4 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

KAREN ELAINE HALL,

Plaintiff,

vs.

UNITED FRUIT & PRODUCE OF OKLAHOMA, a corporation,

Defendant,

vs.

TULSA AUTO SPRING COMPANY,

Third Party Defendant.

No. 85-C-551-B

DISMISSAL WITH PREJUDICE

Now on this 3 day of ~~January~~ February, 1986, came on for consideration the Motion for Dismissal with Prejudice submitted to the Court by Defendant and Third Party Plaintiff United Fruit & Produce of Oklahoma and by Third Party Defendant Tulsa Auto Spring Company in the above-styled and numbered cause pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. The Court finds that Third Party Plaintiff and Third Party Defendant have stipulated that this action should be dismissed with prejudice.

IT IS THEREFORE ORDERED that the Third Party claim brought by Third Party Plaintiff United Fruit & Produce of Oklahoma against Third Party Defendant Tulsa Auto Spring Company in the above-styled and numbered cause should be, and the same is hereby, dismissed with prejudice to the refiling thereof.

Honorable Thomas R. Brett
Judge of the United States
District Court for the Northern
District of Oklahoma

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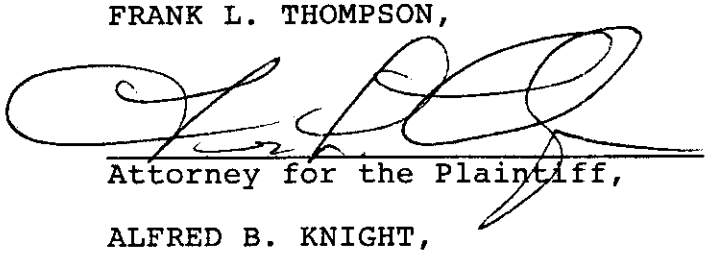
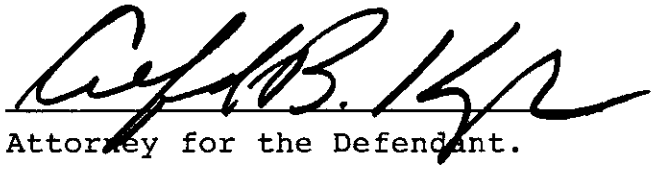
APPROVALS:

FRANK L. THOMPSON,



Attorney for the Plaintiff,

ALFRED B. KNIGHT,



Attorney for the Defendant.

Entered

FILED

FEB -4 1986 mf

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RONALD ADOLPH CROUCH, Petitioner,	)	
vs.	)	NO. 84-C-443-B
MACK ALFORD, et al., Respondents.	)	

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

This matter comes before the Court on the petition for writ of habeas corpus of Ronald Adolph Crouch. Upon the evidence presented at the hearing commenced February 7, 1985 and continued and concluded on January 10, 1986, and upon a review of the record, the Court enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Following one and one-half days of jury trial, petitioner Ronald Adolph Crouch entered pleas of guilty on November 23, 1982, in the District Court of Washington County, Oklahoma, in case number CRF-82-184, of shooting with intent to kill (Count One), shooting with intent to injure (Count Two), and feloniously pointing a weapon (Count Three). He received sentences of twenty-five years with five years suspended on Count One, a five year concurrent sentence on Count Two, a five year concurrent sentence on Count Three, and a $5,000.00 victim

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assessment. Having been tried, convicted and sentenced within the Northern District of Oklahoma, this Court has proper jurisdiction and venue. 28 U.S.C. §2241(c)(3) & (d).

2. Petitioner did not perfect a direct appeal of his criminal conviction, but did pursue post-conviction relief. The state district judge denied the application for post-conviction relief on April 11, 1984. The Oklahoma Court of Criminal Appeals affirmed the district court's denial of post-conviction relief on May 10, 1984.

3. Petitioner filed his application for Writ of Habeas Corpus in the Eastern District of Oklahoma on May 21, 1984. The case was transferred to this Court May 22, 1984.

4. Petitioner originally challenged the judgment and sentence against him on the grounds, first, that his guilty plea was the result of ineffective assistance of counsel and thus involuntary, and second, that he was denied due process of law by reason of an order directing petitioner to pay restitution to the victim. This Court dismissed petitioner's second ground for relief by order filed September 17, 1984.

5. The Court commenced an evidentiary hearing on February 7, 1985, wherein petitioner appeared pro se. Upon the taking of some evidence the Court determined, sua sponte, that the hearing should be continued and counsel should be appointed to represent petitioner in this action. The Court also determined it was necessary that the State obtain and submit to the court a transcript of the one and one-half days of trial in the state court.

6. The Court appointed Ronald E. Hignight as petitioner's counsel on March 1, 1985. The Court received the transcript of the state court jury trial on September 12, 1985.

7. The evidentiary hearing recommenced on January 10, 1986, with court appointed counsel representing petitioner. Petitioner dismissed his claim of ineffective assistance of counsel--that his trial counsel was inadequately prepared for trial and inadequately tried the case. Petitioner announced that the sole remaining issue was whether his guilty plea was made involuntarily, an allegation which had been part of his ineffective assistance claim.

8. The testimony at the February 7, 1985 and January 10, 1986 hearings established that petitioner's family and Ron Clark, petitioner's employer, engaged Mr. George Briggs as petitioner's trial counsel on September 21, 1982. The parties agreed that counsel's fee would be $7,500.00. Trial counsel received $4,000.00 of that fee prior to trial from various persons. Ron Clark paid trial counsel $1,000.00 of the fee on September 21, 1982. Petitioner's relatives paid an additional $3,000.00 prior to trial. Petitioner's parents owed a balance of $3,500.00 in legal fees at the time of trial.

9. Petitioner testified that trial counsel Briggs had advised petitioner to plead guilty on the charges against him. Petitioner and his mother, Mrs. Lenora Crouch, testified that trial counsel Briggs coupled his advice with a threat that the petitioner's parents would have to sell their home to pay the

balance of the attorney fee if counsel was required to continue with the trial. Petitioner stated that he was not being truthful with the judge at the time of the plea when he stated that the plea was voluntary and not coerced, because of the indirect coercion relative to his elderly parents' house sale to pay the balance of the attorney fee.

10. Petitioner's trial counsel testified at the January 10, 1986 hearing that he made no threat to the petitioner or petitioner's parents. Trial counsel testified that he discussed the possibility of a plea agreement with petitioner during a lull in the second day of trial before the State presented its final witnesses. Counsel testified that for approximately one and one-half hours he went over the relevant considerations to be taken into account in a plea agreement with petitioner, such as the evidence presented by the State and possible errors the State had committed during trial. Petitioner then decided to plead. Before returning to the courtroom, petitioner and counsel approached petitioner's parents and counsel explained the change of plea to them. Counsel testified that petitioner's mother then asked counsel whether she and her husband would still owe the remaining $3,500.00 if petitioner entered a plea, to which counsel responded that it would not have to be paid. Furthermore, counsel testified that he never discussed the fee arrangement with petitioner during trial or the plea phase of the proceedings. The parents did state that it would probably be necessary to sell their home if the balance of the attorney's fee had to be paid.

11. Trial counsel George Briggs is an attorney with thirty-four (34) years of experience in criminal law as a prosecutor and defense attorney. He served as Assistant County Attorney for Osage County, Oklahoma for approximately four years.

12. No evidentiary hearing was held in state court on petitioner's allegation that his plea was involuntary and coerced.

13. Petitioner concedes that the trial court properly questioned and advised petitioner of his rights at the November 23, 1982, plea and sentencing.

14. Trial counsel Briggs did not ask for or receive a note, mortgage, or deed of trust on the petitioner's parents' home. However, the parents told Briggs prior to or during the trial that to pay the balance of the fee they would have to sell their residence home.

15. The transcript of the November 23, 1982 plea indicates that the plea was knowingly and voluntarily entered.

16. The April 1, 1984 Order of the State District Court in and for Washington County, Oklahoma granting summary disposition on petitioner's application for post-conviction relief contains the following finding of fact: "That the Petitioner entered his pleas of guilty in CRF-82-184 freely, voluntarily, and knowingly." The May 10, 1984 affirmance by the Oklahoma Court of Criminal Appeals states "[t]he transcript of the plea and sentencing does not support the appellant's claim [that his guilty plea was not knowing and voluntary]."

17. Upon a hearing of the testimony, this Court finds that trial counsel George Briggs did not coerce petitioner into pleading guilty and did not threaten petitioner or his parents that if petitioner did not plead guilty petitioner's parents would have to sell their home to satisfy the balance of the attorney's fee as alleged. Petitioner's plea of guilty was freely and voluntarily given.

CONCLUSIONS OF LAW

1. The standard as to whether a plea of guilty is voluntary for the purposes of the federal Constitution is a question of federal law. Marshall v. Lonberger, 459 U.S. 422, 431 (1983). However, questions of historical fact are questions governed by the provisions of 28 U.S.C. §2254(d), which establishes a presumption of correctness for factual determinations made by a state court.

2. Here, though the parties have stipulated that the standard to be applied herein is derived from 28 U.S.C.§2254(d) ("the burden shall rest upon the applicant to establish by convincing evidence that the factual determination by the State Court was erroneous") the state courts made no factual determination with regard to petitioner's allegation that he had been coerced by counsel's threat of forcing the sale of his parents' home. As mentioned hereinabove, the state courts held no evidentiary hearings on the allegations; their factual determinations were based upon the transcript of the plea and sentencing. It thus appears, contrary to the stipulation of the

parties, that the "convincing evidence" standard of §2254(d) does not apply since §2254 applies to factual determinations made "after a hearing on the merits of a factual issue."

3. Though the "convincing evidence" standard does not apply herein, the Court concludes that petitioner has not shown by a preponderance of the evidence that he was coerced to plead guilty by counsel's threat of forcing the sale of his parents' home or that his guilty plea was made involuntarily.

4. A separate Judgment in keeping with the Findings of Fact and Conclusions of Law in favor of defendant and against plaintiff, denying plaintiff's application for writ of habeas corpus, shall be entered this date.

ENTERED this 4th day of February, 1986.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB -4 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

RONALD ADOLPH CROUCH,

Petitioner,

v.

MACK ALFORD, et al.,

Respondents.

No. 84-C-443-B

J U D G M E N T

This action came on for hearing before the Court on petition for writ of habeas corpus. The issues having been duly heard and a decision having been duly rendered in Findings of Fact and Conclusions of Law entered this date,

IT IS ORDERED AND ADJUDGED that petitioner's application for writ of habeas corpus be denied, and that the action be dismissed on the merits.

DATED this 4th day of February, 1986.

Thomas R. Brett

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

KAREN ELAINE HALL,

Plaintiff,

vs.

UNITED FRUIT & PRODUCE OF OKLAHOMA, a corporation,

Defendant,

vs.

TULSA AUTO SPRING COMPANY,

Third Party Defendant.

No. 85-C-551-B

DISMISSAL WITH PREJUDICE

Now on this 3 day of ~~January~~ February, 1986, came on for consideration the Motion for Dismissal with Prejudice submitted to the Court by Defendant and Third Party Plaintiff United Fruit & Produce of Oklahoma and by Third Party Defendant Tulsa Auto Spring Company in the above-styled and numbered cause pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. The Court finds that Third Party Plaintiff and Third Party Defendant have stipulated that this action should be dismissed with prejudice.

IT IS THEREFORE ORDERED that the Third Party claim brought by Third Party Plaintiff United Fruit & Produce of Oklahoma against Third Party Defendant Tulsa Auto Spring Company in the above-styled and numbered cause should be, and the same is hereby, dismissed with prejudice to the refiling thereof.

Honorable Thomas R. Brett
Judge of the United States
District Court for the Northern
District of Oklahoma

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FILED

FEB -4 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UTICA NATIONAL BANK & TRUST CO., a national banking association,	)	
Plaintiff,	)	
vs.	)	No. 85-C-512-E
ROBERT G. HEERS, et al.,	)	
Defendants.	)	

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that plaintiff's claims against Spa Health & Fitness Centers, Inc., asserted herein are hereby dismissed with prejudice, each party to bear its/his/their own costs incurred herein.

This dismissal shall nave no effect on any other claims made against any other defendants herein.

DATED this 31 day of January, 1986.

UTICA NATIONAL BANK & TRUST CO.

By: _____
Charles V. Wheeler
GABLE & GOTWALS, INC.
20th Floor, Fourth National Bank
Tulsa, OK 74119
ATTORNEYS FOR UTICA NATIONAL BANK & TRUST CO.

SPA HEALTH & FITNESS CENTERS, INC.

By: _____

04

FILED

FEB -4 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UTICA NATIONAL BANK & TRUST CO., a national banking association,	)	
Plaintiff,	)	
vs.	)	No. 85-C-512-E
ROBERT G. HEERS, et al.,	)	
Defendants.	)	

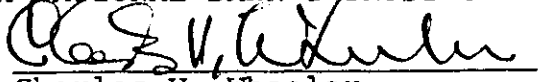
STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that plaintiff's claims against Kenneth O. Melby, asserted herein are hereby dismissed with prejudice, each party to bear its/his/their own costs incurred herein.

This dismissal shall nave no effect on any other claims made against any other defendant herein.

DATED this 31 day of January, 1986.

UTICA NATIONAL BANK & TRUST CO.

By: 
Charles V. Wheeler
GABLE & GOTWALS, INC.
20th Floor, Fourth National Bank
Tulsa, OK 74119
ATTORNEYS FOR UTICA NATIONAL BANK & TRUST CO.


KENNETH O. MELBY

66

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB -4 1986

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

UTICA NATIONAL BANK & TRUST CO., a national banking association,	)	
Plaintiff,	)	
vs.	)	No. 85-C-512-E
ROBERT G. HEERS, et al.,	)	
Defendants.	)	

STIPULATION OF DISMISSAL

PURSUANT to the provisions of Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereto agree that plaintiff's claims against Rice-Melby Enterprises, Inc., asserted herein are hereby dismissed with prejudice, each party to bear its/his/their own costs incurred herein.

This dismissal shall nave no effect on any other claims made against any other defendant herein.

DATED this 31 day of January, 1986.

UTICA NATIONAL BANK & TRUST CO.

By: Charles V. Wheeler

Charles V. Wheeler
GABLE & GOTWALS, INC.
20th Floor, Fourth National Bank
Tulsa, OK 74119
ATTORNEYS FOR UTICA NATIONAL BANK & TRUST CO.

RICE-MELBY ENTERPRISES, INC.

By: Robert A. Rice Pres.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AFFHOLDER, INC., Plaintiff, vs. PRESTON CARROLL COMPANY, INC. AND CFW CONSTRUCTION COMPANY, INC., Defendants, and THE LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT OF JEFFERSON COUNTY, KENTUCKY, et al., Third Party Defendants.	)	No. 86-C-47-E

FILED

FEB - 3 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

NOW on this 3rd day of ~~January~~ Jan., 1986 this matter comes on for hearing before the Court in the above-captioned case and the Court, being fully advised in the premises finds the issues herein have been resolved.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this case be dismissed.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

3

8

Entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GREG A. KENT,

Plaintiff,

vs.

BURLINGTON NORTHERN RAILROAD COMPANY,

Defendant.

No. 85-C-343-B

FILED

FEB - 3 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

Upon stipulation of the parties and for good cause shown, plaintiff's causes of action against the defendant are hereby dismissed with prejudice to the refiling of such actions.

IT IS SO ORDERED this 3rd day of ~~January~~ February, 1986.

S/ THOMAS R. BRETT
United States District Judge

Entered

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

T. D. WILLIAMSON, INC., AND SUBSIDIARIES, INCLUDING TDW TRADING A WHOLLY OWNED D.I.S.C.	)	
Plaintiff	)	Civil No. 83-C-908-B
v.	)	
THE UNITED STATES,	)	
Defendant	)	

STIPULATION OF DISMISSAL

It is hereby stipulated and agreed that the complaint in the above-entitled action be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of this litigation.

E. JOHN EAGLETON

THOMAS G. POTTS

Attorneys for Plaintiff

KENT M. ANDERSON

Attorney for Defendant

Entered

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

T. D. WILLIAMSON, INC., AND SUBSIDIARIES, INCLUDING TDW TRADING A WHOLLY OWNED D.I.S.C.	)	
Plaintiff	)	Civil No. 83-C-860-B
v.	)	
THE UNITED STATES,	)	
Defendant	)	

FILED

FEB - 3 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

STIPULATION OF DISMISSAL

It is hereby stipulated and agreed that the complaint in the above-entitled action be dismissed with prejudice, the parties to bear their respective costs, including any possible attorneys' fees or other expenses of this litigation.

E. JOHN EAGLETON

THOMAS G. POTTS

Attorneys for Plaintiff

M. KENT ANDERSON

Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JAMES ELLIS COX, Executor of the Dorothy Louise Wilson Estate,

Plaintiff,

vs.

HARTFORD CASUALTY INSURANCE COMPANY, a corporation,

Defendant.

No. 84-C-775-E

JOURNAL ENTRY OF JUDGMENT

On this 27th day of January, 1986, plaintiff, James Ellis Cox, Executor of the Dorothy Louise Wilson Estate, appeared in person and by and through his attorney, Patrick H. Kernan. Also, came the defendant, Hartford Casualty Insurance Company, a corporation, appearing by and through its attorney, James K. Secrest, II. Finally, also appearing was Greg Nellis, as attorney for the third party defendant, Bryan Patrick Watts.

The Court, after hearing argument of counsel, determined that the claim presented by the defendant and third party plaintiff, Hartford, against the third party defendant, Bryan Patrick Watts, is and should be severed from the action brought by the plaintiff against the defendant. The Court excused Mr. Nellis and advised all counsel that said third party claim should be presented at a later date, subsequent to the trial on the plaintiff's claim against the defendant.

The plaintiff and defendant, having announced ready, the case proceeded to trial. After various recesses and on the 29th day of January, 1986, the jury of six persons, who being duly impounded and sworn to well and truly try the issues

joined between the plaintiff and defendant and true verdicts render according to the evidence; and having heard the evidence, the charges of the Court and arguments of counsel found the issues in favor of the plaintiff, James Ellis Cox, Executor of the Dorothy Louise Wilson Estate, and against the defendant, Hartford Casualty Insurance Company, a corporation, and fixed plaintiff's recovery in the sum of $550,000.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, James Ellis Cox, Executor of the Dorothy Louise Wilson Estate, have and recover from the defendant, Hartford Casualty Insurance Company, a corporation, the sum of $550,000.00 plus interest at the rate of 15% from the date of filing to date of judgment and 7.85% from date of judgment.

JUDGE OF THE DISTRICT COURT

APPROVED AS TO FORM:

PATRICK H. KERNAN
Attorney for Plaintiff

JAMES K. SECREST, II
Attorney for Defendant

Entered

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROLF JENSEN & ASSOCIATES, INC. an Illinois corporation, Plaintiff,	)	
vs.	)	Case No. 85-C-980 B
JOHN M. NOVACK, d/b/a URBAN DESIGN GROUP, Defendant.	)	

FILED

FEB - 3 1986

Jack C. Silver, Clerk
U. S. DISTRICT COURT

CONSENT JUDGMENT

NOW, on this 3rd day of ~~January~~ February, 1986, this cause comes on for consideration pursuant to the agreement of all parties of this action.

The Court finds that the defendant, JOHN M. NOVACK d/b/a URBAN DESIGN GROUP, has been duly served with summons and complaint as provided by law.

Thereupon, the Court having been fully advised in the premises, having examined all pleadings herein and upon the agreement of all parties to this action that judgment be entered as hereinafter provided, finds that it has jurisdiction of the parties hereto and of the subject matter hereof, and having heard all of the evidence and upon consideration thereof, finds as follows:

That all of the allegations of the plaintiff Rolf Jensen & Associates, Inc. are true and correct as therein set forth, and

that there is due the plaintiff the sum of Twenty-six Thousand Five Hundred Dollars ($26,500.00), together with interest at the rate of 12% per annum from January 1, 1986 until paid.

That plaintiff Rolf Jensen & Associates, Inc. does not waive any rights it may have against other partners or entities that may or may not exist in Urban Design Group.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff Rolf Jensen & Associates Inc. have and recover from defendant JOHN M. NOVACK d/b/a Urban Design Group in the sum of $26,500.00, with interest thereon at the rate of 12% per annum from January 1, 1986 until paid.

S/ THOMAS R. BRETT

Thomas R. Brett
United States District Judge

APPROVED AS TO FORM AND CONTENT:

John A. Gaberino, Jr., OBA # 3188
HUFFMAN ARRINGTON KIHLE
GABERINO & DUNN
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(918) 585-8141

Attorneys for Plaintiff
Rolf Jensen & Associates, Inc.

James R. Jessup

James R. Jessup, OBA #4652
Stone Jessup & Styron, P.C.
320 S. Boston, 21st Floor
Tulsa, Oklahoma 74103
(918) 583-1178

Attorneys for Defendant
John M. Novack d/b/a
Urban Design Group

John M. Novack
d/b/a Urban Design Group

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKALHOMA

MOTOROLA, INC., a Delaware corporation,	)	
Plaintiff,	)	
vs.	)	Case No. 85-C-553-E
HILIARE J. LaBERGE,	)	
Defendant.	)	

DISMISSAL WITH PREJUDICE AND RELEASE OF JUDGMENT

COMES now the Plaintiff, MOTOROLA, INC., a Delaware corporation, and dismisses all claims alleged in this action with prejudice, and further releases the Defendant Hiliare J. LaBerge and Garnishee George Moody (U.S.) Inc., a Delaware corporation, both collectively and individually, from all judgments, claims and debts arising from or related to the subject matter of this action with prejudice.

JOHN S. ATHENS
TONY W. HAYNIE

By: Tony W. Haynie
Tony W. Haynie (O.B.A. #11097)

2400 First National Tower
Tulsa, Oklahoma 74103
(918) 586-8954

Attorneys for Plaintiff
MOTOROLA, INC.

OF COUNSEL:

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(918) 586-5711